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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 448

AMERICAN FEDERATION OF LABOR, METAL TRADES DEPARTMENT, A. F. OF L.; FLORIDA STATE FEDERATION OF LABOR, ET AL., APPELLANTS,

vs.

J. TOM WATSON, AS ATTORNEY GENERAL OF THE STATE OF FLORIDA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA

FILED SEPTEMBER 24, 1945.

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[fol. a] [File endorsement omitted.]

[fol. 1]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA, TAMPA DIVISION

Civil Docket No. 881

AMERICAN FEDERATION OF LABOR, METAL TRADES DEPARTMENT, A. F. of L.; Florida State Federation of Labor, International Association of Machinists and Local Unions Nos. 570 and 734 thereof; International Brotherhood of Electrical Workers and Local Unions Nos. B-108 and 177 thereof; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America and Local Unions Nos. 433 and 199 thereof; International Union of Operating Engineers and Local Unions Nos. 925 and 673 thereof; International Association of Sheet Metal Workers and Local Unions No. 57 and 435 thereof; United Association of Journeymen Plumbers and Steamfitters of America and Canada and Local Unions Nos. 766 and 234 thereof; United Brotherhood of Carpenters and Joiners of America and Local Union No. 696 thereof and Carpenters District Council of Jacksonville and Vicinity; Brotherhood of Painters, Decorators and Paperhangers of America and Local Unions Nos. 88 and 164 thereof; International Hod Carriers, Builders and Common Laborers Union of America and Local Unions Nos. 1207 and 647 thereof; International Brotherhood of Blacksmiths, Drop Forgers and Helpers of America and Local Unions Nos. 141 and 96 thereof; International Association of Bridge and Structural Ironworkers of America and Local Unions Nos. 397 and 597 thereof; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Local Unions Nos. 79 and 613 thereof; International Federation of Technical Engineers, Architects and Draftsmen's Unions and Local Union No. 98 thereof; Cigar Makers' International Union of America; International Brotherhood of Paper Makers; International Brotherhood of Pulp, Sulphite and Paper Mill Workers of the United States and Canada; Bricklayers, Masons and Plasterers International Union of America and Local Union No. 3 thereof; Metal Polish-

ers, Buffers, Platers and Helpers International Union [fol. 2] and Local Union No. 105 thereof; International Association of Heat and Frost Insulators and Asbestos Workers and Local Union No. 67 thereof; Hotel and Restaurant Employees International Alliance and Bartenders International League of America and Local Union No. 153 thereof; Office Employees Union No. 23,133; Office Employees Union No. 22,222; E. M. Samples, individually and as President of Local Union No. 88, affiliated with the Brotherhood of Painters, Decorators and Paperhangers of America; R. M. Fisher, individually and as President of Local Union No. 766, affiliated with the United Association of Journeymen Plumbers and Steamfitters of America and Canada; O. R. Guhl, individually and as a member of Executive Board, Local Union No. 234, affiliated with the United Association of Journeymen Plumbers and Steamfitters of America and Canada; McCloskey & Company; R. J. Gould, d/b/a Gould Welding & Erecting Company, Tampa, Florida Brewery, Inc., Plaintiffs and Representatives of a Class,

vs.

J. Tom Watson, as Attorney General of the State of Florida; Millard Caldwell, as Governor of the State of Florida; J. Rex Farrior, as State Attorney in and for Hillsborough County, Florida; Hugh Culbreath, as Sheriff of Hillsborough County, Florida, Defendants and Representatives of a Class,

and

Tampa Shipbuilding Company, Inc.; St. Johns River Shipbuilding Company; Weir's Dry Cleaners & Laundry, Inc., National Container Corporation, and Cigar Manufacturers' Association of Tampa, Nominal Defendants

[fol. 3] Complaint—Filed February 9, 1945

I

Jurisdictional Allegations

1. This is a suit of a civil nature seeking a decree for temporary and permanent injunction, and the matter in controversy exceeds, exclusive of interest and costs, the

sum and value of Three Thousand ($3,000.00) Dollars, as hereinafter more specifically stated.

2. This suit arises under the Constitution and Laws of the United States and is brought to redress and prevent the deprivation, under color of law of the State of Florida, of rights, privileges and immunities secured under the Constitution and Laws of the United States, including Article I, Section 10, Article VI, and the First and Fourteenth Amendments to such Constitution, and Title 29, Sections 151-66 of the U. S. Code, all as hereinafter more fully appears. This Court has jurisdiction under Title 28, Section 41, subsections 1 and 14, U. S. C. A.; also under Title 8, Section 43, of the U. S. Code, and Title 28, Section 380, U. S. C. A., all as hereinafter more fully appears.

II

The Purpose of This Action

The purpose of this action is to enjoin and restrain the operation and enforcement of a certain Florida law commonly called and known as the "Anti-Labor Amendment," and herein so designated, passed by the Florida Legislature at its regular 1943 session and subsequently ratified by referendum vote of the people of the State of Florida as an amendment to the Constitution of the State of Florida. Such law purports to prohibit any form of union shop provision in existing or future collective bargaining agreements between employers and representatives of employees. The term "union shop" or "union security" agreements, as used in this complaint, includes any and all agreements between employers and labor organizations or other representatives of employes wherein membership in a labor organization is required as a condition of employment.

[fol. 4] The operation of said law threatens the invasion and destruction of certain rights guaranteed to the plaintiffs by the Constitution and Laws of the United States as hereinafter set forth. The defendant law enforcement officials herein threaten to, and will require plaintiffs and members of the class they represent to comply with the provisions of said law, by both civil and criminal proceedings. The action of such defendants, under color of said law, will invade and destroy the personal and property rights of the plaintiffs, and will result in a multiplicity of

suits and work irreparable damage to and injuries on plaintiffs and all of their class.

The issues are the validity of the law, as well as the constitutional rights of the plaintiffs and their constitutional immunities.

III

The Parties and the Rights Asserted

1. At all times herein mentioned the plaintiff, American Federation of Labor, was and now is a voluntary and unincorporated association composed of numerous voluntary and unincorporated associations or labor unions, the said affiliated associations having an aggregate membership of several million persons in all States of the United States, including the State of Florida, and in Canada, and all of said members are classified according to their various trades and industries into separate, voluntary and unincorporated associations or labor unions. The American Federation of Labor maintains its principal office in the City of Washington, District of Columbia.

2. At all times herein mentioned the plaintiff, Metal Trades Department, was and now is a division of the American Federation of Labor, consisting of International Unions affiliated with the American Federation of Labor, whose members are engaged in the metal trades industries. Its headquarters and principal office are located in the A. F. of L. Building, City of Washington, District of Columbia.

3. At all times herein mentioned the plaintiff, Florida State Federation of Labor, was and now is a voluntary and [fol. 5] unincorporated association composed of voluntary and unincorporated associations or labor unions affiliated with the American Federation of Labor and located in the State of Florida. The Florida State Federation of Labor has its headquarters in the City of Jacksonville, State of Florida.

4. The American Federation of Labor and the Florida State Federation of Labor include among their affiliated organizations local and national labor unions, some of which are more particularly described as plaintiffs in paragraphs 5 through 8, infra, which have been designated and selected as collective bargaining representatives by a majority of employes of each of many employers in appropriate col-

lective bargaining units in the State of Florida, and a large number of such local and national unions presently are parties to, or desire or are about to become parties to, various types of union shop or union security contracts with various employers throughout the State of Florida.

5. At all times herein mentioned the plaintiff, Brotherhood of Painters, Decorators and Paperhangers of America, was and now is a voluntary, unincorporated association of employees employed in the painting trade and constitutes an International labor organization. It has a total membership of approximately 175,000 employees in numerous states of the United States and Canada, including approximately 4,500 in the State of Florida. It maintains its principal office in the City of Lafayette, State of Indiana, and *the* it is affiliated with the plaintiffs American Federation of Labor and the Florida State Federation of Labor. Its members are organized into autonomous subdivisions known as local unions, a number of which are located in Florida and consist, in whole or in part, of residents of the State of Florida employed in such trade. The plaintiffs, Brotherhood of Painters, Decorators and Paperhangers of America's Local Unions Nos. 88 and 164, are such local unions located in the Cities of Tampa and Jacksonville respectively.

6. At all times herein mentioned the plaintiff, United Association of Journeymen Plumbers and Steamfitters of America and Canada, was and now is a voluntary, unincorporated association of employees employed in the plumbing and steamfitting trades and constitutes an International [fol. 6] labor organization. It has a total membership of approximately 130,000 employes in numerous States of the United States and Canada, including approximately 4,000 in the State of Florida. It maintains its principal office in the City of Washington, District of Columbia, and it is affiliated with the plaintiffs, American Federation of Labor, the Florida State Federation of Labor, and the Metal Trades Department, A. F. of L. Its members are organized into autonomous subdivisions known as local unions, a number of which are located in Florida and consist, in whole or in part, of residents of the State of Florida employed in such trades. The plaintiffs, United Association of Journeymen Plumbers and Steamfitters of America and Canada's Local Unions Nos. 766 and 234, are such local

unions located in the Cities of Tampa and Jacksonville respectively.

7. The International Association of Machinists, and Local Unions Nos. 570 and 731 thereof; International Brotherhood of Electrical Workers, and Local Unions Nos. B-108 and 177 thereof; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, and Local Unions Nos. 433 and 199 thereof; International Union of Operating Engineers, and Local Unions Nos. 925 and 673 thereof; International Association of Sheet Metal Workers and Local Unions Nos. 57 and 435 thereof; United Association of Journeymen Plumbers and Steamfitters of America and Canada, and Local Unions Nos. 766 and 234 thereof; United Brotherhood of Carpenters and Joiners of America, and Local Union No. 696 thereof, and Carpenters District Council of Jacksonville and vicinity; Brotherhood of Painters, Decorators and Paperhangers of America, and Local Unions Nos. 88 and 164 thereof; International Hod Carriers, Builders & Common Laborers Union of America, and Local Unions Nos. 1207 and 647 thereof; International Brotherhood of Blacksmiths, Drop Forgers & Helpers of America, and Local Unions Nos. 141 and 96 thereof; International Association of Bridge and Structural Ironworkers of America, and Local Unions Nos. 397 and 597 thereof; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and Local Unions Nos. 79 and 613 thereof; International Federation of Technical Engineers, Architects and Draftsmen's Unions, and Local Union No. 98 thereof; Cigarmakers' International Union of America; International Brotherhood of Paper Makers; International Brotherhood of Pulp, [fol. 7] Sulphite and Paper Mill Workers of the United States and Canada; Bricklayers, Masons and Plasterers International Union of America, and Local Union No. 3 thereof; Metal Polishers, Buffers, Platers & Helpers International Union, and Local Union No. 105 thereof; International Association of Heat & Frost Insulators and Asbestos Workers, and Local Union No. 67 thereof; Hotel and Restaurant Employees International Alliance & Bartenders International League of America, and Local Union No. 153 thereof, are all voluntary and unincorporated associations of employees employed in the various and respective trades and occupations as indicated in the respective names of such

plaintiffs. Such employees, members of such plaintiffs, are located throughout the United States, including Florida, and Canada. Such plaintiffs not designated as local unions are International labor organizations similar to the plaintiffs described in paragraphs 5 and 6 hereof, and are all affiliated with the plaintiffs, American Federation of Labor and Florida State Federation of Labor. Their respective headquarters are located in various cities and states throughout the United States, but none of such headquarters are located in the State of Florida. The plaintiff local unions specified in this paragraph are all local organizations of employees employed in the particular trade or craft or occupation indicated by the name of the respective affiliator, are affiliated with such parent organizations and are all located in the State of Florida, the first local named with each International Union having its headquarters in the City of Tampa and the second local so named having its headquarters in the City of Jacksonville.

8. At all times herein mentioned the plaintiff, International Office Employees Local Unions No. 23,133 and No. 22,222, were and now are local labor organizations located in the City of Jacksonville, and City of Tampa, Florida, respectively, and consisting of employees employed in the occupation of office workers. They are directly affiliated with the plaintiff, American Federation of Labor.

9. At all times herein mentioned the plaintiff, E. M. Samples, was and now is a citizen of the United States, a resident of the City of Tampa, State of Florida, and a member and duly-elected President of plaintiff, Local Union No. 88, [fol. 8] affiliated with the Brotherhood of Painters, Decorators and Paperhangers of America. He was and is an employee of the defendant, Tampa Shipbuilding Company.

10. At all times herein mentioned the plaintiff, R. M. Fisher, was and now is a citizen of the United States, a resident of the City of Tampa, State of Florida, and a member and duly-elected President of plaintiff, Local Union No. 766, affiliated with the United Association of Journeymen Plumbers and Steamfitters of America and Canada. He was and is an employee of the defendant, Tampa Shipbuilding Company.

11. At all times herein mentioned the plaintiff, O. R. Suhl, was and now is a citizen of the United States, a

resident of the City of Jacksonville, State of Florida, and a member and duly-elected Executive Board member of Local Union No. 234, affiliated with the United Association of Journeymen Plumbers and Steamfitters of America and Canada. He was and is an employee of the defendant, St. Johns River Shipbuilding Company.

12. At all times herein mentioned the plaintiff, McCloskey & Company, was and now is a business corporation organized under the laws of the State of Delaware, with its principal office in the City of Philadelphia and State of Pennsylvania and heretofore engaged in the building construction business in the States of Pennsylvania, New York, Maryland, Virginia and the District of Columbia, and presently engaged in the business of building ships in the City of Tampa, State of Florida, where it employs approximately 5,000 employees.

13. At all times herein mentioned the plaintiff, R. J. Gould, was and now is a citizen of the United States, a resident of the City of Tampa, State of Florida, and was and now is engaged in doing business under the name and style of Gould Welding & Erecting Company, and was and now is engaged in general welding and structural steel building work in the City of Tampa, State of Florida, where it employs approximately 42 employees.

13½. At all times herein mentioned the plaintiff, Tampa Florida Brewery, Inc., was and now is a corporation organized and existing under the laws of Florida and engaged [fol. 9] in the brewery business in the City of Tampa, State of Florida, employing some 160 employees in that city.

14. All plaintiff unincorporated labor associations are organizations and associations of employees, including working men and women, in various trades, occupations and industries, who have from time to time assembled and associated together and are assembling and associating together for the purpose of organizing themselves into voluntary and unincorporated associations and for the purpose of forming, joining and assisting their organizations so formed, including the plaintiff labor organizations herein named, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining and otherwise dealing with

their employers concerning hours of employment, rates of pay, working conditions or grievances of any kind relating to employment, and, in particular, the securing and obtaining of union shop agreements providing for and insuring union security and protection, all for their mutual aid and protection, and for the purpose, by these and other means of protecting themselves and improving their working conditions, wages and employment relationships. All plaintiff unincorporated labor associations, both national and local, are of the type commonly regarded and denominated as labor unions.

15. Various employees, including the individual plaintiffs herein, have associated and assembled and formed voluntary associations, named herein as plaintiff labor organizations, and other labor organizations affiliated with the said plaintiffs, for the following further purposes necessary to the effectuation of the foregoing purposes:

(1) Exchanging and discussing among and between themselves ideas and information related to the foregoing purposes and arriving at mutual and common decisions.

(2) Disseminating to the public, to fellow employees who have not joined in the association and to public officials and representatives of government, both of the various States, including Florida, and of the United States, facts, information and opinions concerning the [fol. 10] said association, its purposes and objectives and the problems of its members and of wage earners generally, the benefits of the National Labor Relations Act, and other federal statutes and the rights granted thereby, and to petition for redress of grievances.

(3) To cement the interests of organized labor and of employees in individual trades and industries for their mutual protection, to establish fraternal relations among such employees, to insure harmonious cooperation and action, to protect and promote the rights, privileges and immunities of the wage earners and the general welfare of labor organizations and employees represented by and affiliated with the plaintiffs and of labor generally, and to increase the dignity of labor and elevate it to a higher level of good citizenship.

(4) To provide sufficient skilled, competent and experienced artisans for employers at a predetermined applicable wage rate.

16. The said employees, including the individual labor organizations, plaintiffs herein, have through their local and national unions associated and assembled and formed the plaintiff, American Federation of Labor, with the objective and purpose of further effectuating all of the foregoing purposes and also to create and encourage a closer federation and cooperation through the organization of union councils respectively, in cities and States; to establish national and international labor organizations based upon the autonomy of each trade or industry; to etablish a national federation of all national and international labor organizations; to aid and assist each other; to aid and encourage public support for union members and union-made materials; to secure legislation in the interests of the working people and to influence public opinion by peaceful and legal methods in favor of organized labor and better working and health standards; and to aid and encourage the labor press of America.

17. The said employes, including the individual labor organizations, plaintiffs herein, have through their local and national unions associated and assembled and formed the [fol. 11] plaintiff, Florida Federation of Labor, with the objective and purposes of further effectuating all of the foregoing objectives and purposes and also to devise means for the complete organization of labor in Florida; to promote good citizenship; to establish better communication between the labor unions of said State; to secure united and harmonious action in all matters affecting the welfare of organized workers; to circulate labor literature and promote economic intelligence; to create a public sentiment more favorable to labor unions; to prevent unfavorable legislations, and make known the opponents of the principles of organized labor; to collect statistics concerning labor so that organized labor may be better informed in preparing laws calculated to benefit the laboring people; to discourage and to prevent the growth of child labor; to prevent the practice of blacklisting; to unite the efforts of labor organizations for better and healthier working conditions; to give scope and power to all attempts to enforce fair conditions, in particular through the institution

of the union shop; to endorse or protest wherever the interests of laboring people in Florida may be involved; to encourage workers for wages to organize themselves for the protection of their rights and the advancement of their special vocations, and to promote the closest possible unity among labor people in matters of general concern. There are numerous other separate unincorporated labor organizations in the State of Florida affiliated with the Florida Federation of Labor for the objective and purpose aforesaid, and the said Florida Federation of Labor is composed of delegates appointed by or represented by said various labor organizations in the State of Florida.

18. In the effectuation of the purposes aforementioned, it is the necessary objective and practice of labor organizations and of the plaintiffs herein mentioned and their affiliates to negotiate and bargain with persons employing members of such organizations with respect to wages, hours and working conditions of the members of said unions and pertaining to other matters affecting or threatening the economic standards and the mutual welfare of the members of said union, and to arrive at mutual agreements embodied in collective bargaining contracts with said employers. The most important of such agreements are those containing union shop or union security provisions whereunder employees of such employers are required to become [fol. 12] or remain members of a labor organization as a condition of employment. The obtaining of such provisions in collective bargaining agreements between labor organizations and employers constitutes an ultimate objective of the association of working people, including the individual plaintiffs herein, into labor organizations and of such organizations themselves, including the plaintiff labor organizations.

19. A principal purpose sought to be achieved by the members of labor associations, including members of plaintiff associations and the individual plaintiffs herein, in the exercise of their rights of assembly, speech, press, and petition, as hereinbefore alleged, is to secure economic security through the entering into by labor associations of which they are members of such union shop or union security agreements. The securing of such agreements is a necessary and indispensable concomitant of the assemblage of working people, including the members of plaintiff associa-

tions and the individual plaintiffs herein, into labor organizations, and the right of labor associations, including plaintiff associations, to maintain and obtain such agreements, constitutes a necessary and indispensable element of their proper functioning and for the fulfillment of their purposes, as heretofore set forth.

20. Such union shop or union security agreements and the right to enter into them constitute valuable property and civil rights in plaintiffs, for the following additional reasons: The union shop or union security agreement constitutes the most effective means of obtaining and securing for plaintiff labor organizations, their members, and the indivdual plaintiffs herein:

(1) Job security and protection from employer discrimination by removal of motives to discharge or demote because of union activity.

(2) Equality of bargaining power, with consequent betterment of working conditions by insuring labor a united front in the contest for a fair share of the joint products of capital and labor.

(3) Protection of working standards by preventing cut-throat wage competition by non-union employees.

[fol. 13] (4) Equality of sacrifice by insuring that all who enjoy union wages and working conditions, achieved through years of struggle and deprivation, share in the costs of such benefits as members of the union rather than as "free riders."

(5) An increased measure of union responsibility for their obligations under collective barggining agreements by providing a means of imposing disciplinary action.

(6) Elimination of jurisdictional strife by safeguarding against raids and other disruptive tactics of rival labor organizations, and

(7) Labor-management cooperation by eliminating the suspicion and hostility which often characterizes the initial stages of employer recognition, thereby freeing union energies and resources for constructive cooperation rather than defensive sparring.

21. Labor organizations, including plaintiff labor organizations, have for many years in the past and have at the present time large numbers of union shop or union security agreements with various employers in a large number of trades and industries throughout the United States and in the State of Florida. Labor organizations affiliated with plaintiff, Florida State Federation of Labor, and including the plaintiff labor organizations herein, have approximately 500 union shop or union security agreements embracing approximately 100,000 employees of various employers in Florida. Such agreements are with employers engaged in non-agricultural industries, trades and services. Some of these agreements are for one-year periods with automatic renewal clauses for additional year periods. Some of these agreements are for a period of years up to five years, some for the duration of the present war, and others are about to expire in the near future. Such agreements have proved and are proving useful and necessary in the accomplishments of the purposes as enumerated in paragraphs 14 through 19 hereof. In addition, many labor organizations in Florida, affiliated with the plaintiff, American Federation of Labor, or the plaintiff, Florida State [fol. 14] Federation of Labor, including many of the plaintiff labor organizations, are seeking and desire to obtain additional union shop or union security agreements with employers in various industries and trades and services throughout the State of Florida.

22. Most of plaintiff International labor organizations and the plaintiff local unions, including specifically the plaintiff, Brotherhood of Painters, Decorators and Paperhangers of America, and Local Unions Nos. 88 and 164, thereof, and the plaintiff, United Association of Journeymen Plumbers and Steamfitters of America and Canada, and Local Unions Nos. 766 and 234 thereof, are affiliated with Building Trades Councils either in the City of Tampa or the City of Jacksonville. Such Building Trades Councils in such cities are associations of labor organizations whose members are engaged in the building trades industries. For many years a substantial amount of work performed in the building trades in such cities by building trades employers and their employees have been done through members of plaintiff organizations. Throughout the years a practice and tradition have arisen in such build-

ing trades industries, resulting in benefit to building trades employers, building trades employees and the general public, whereunder the labor organizations involved undertook to train and supply the various skilled craftsmen necessary to conduct successfully a substantial portion of such building trades industries, and to require and enforce standards of competence and diligence among employees who are members of such labor organizations, all through the medium of union shop agreements. The same practice and tradition are prevalent generally throughout the larger cities of Florida and throughout the larger cities of the United States. Such practice and tradition have resulted in inestimable benefits to the public generally and to employers and employees. It would be impossible for such practice and tradition to continue or for such building trades industries properly to function without the institution of the union shop.

23. No labor organization in the State of Florida, including the plaintiff labor organizations herein, exercises or has any monopoly or control by reason of any union shop or union security agreement over the supply of labor in any trade, craft, occupation or calling, either in the State of Florida generally or in any city or community within such State.

[fol. 15] 24. In the exercise of their rights of association, free assembly and free speech, and liberty of contract, and in the effectuation of their purposes as aforementioned, the members of labor organizations, including plaintiffs herein mentioned and their affiliates and the individual plaintiffs, have reached joint agreement upon their mutual obligations and operations and have set forth such agreements in written constitutions and by-laws, which constitutions and by-laws have been duly adopted by the members of such organizations and by such organizations. Such constitutions and by-laws constitute the laws of such organizations, define the duties and obligations of the members of such organizations, including the members of plaintiff organizations, one to the other and to the organization of which they are members, and prescribe conditions and qualifications for admission to and continuance in membership in such organizations. A number of labor organizations affiliated with plaintiff, American Federation of Labor, and the plaintiff, Florida State Federation of Labor, and

including a number of plaintiff labor organizations, have adopted in their constitutions provisions requiring as a condition of membership that members agree to work only with persons who are also members of the particular labor organization, and that they continue so to agree as long as they desire to retain their affiliation with said labor organization.

25. Specifically, plaintiff, Brotherhood of Painters, Decorators and Paperhangers of America, and plaintiff, United Association of Journeymen Plumbers and Steamfitters of America and Canada, and the plaintiff local unions affiliated therewith, have duly adopted provisions in their constitutions specifying the duties and obligations of the members of such organizations, and requiring that all persons desiring to obtain or retain membership in such organizations shall work only with persons who are also members of such unions. Such provisions are now, and were at all times herein mentioned, in full force and effect, and specify as follows:

> Constitution of the Brotherhood of Painters, Decorators and Paperhangers of America (p. 99):—

"Sec. 304. No member of this Brotherhood shall [fol. 16] injure the interests of another by undermining him in prices or wages, or wilfully performing any other act by which the situation of any member may be placed in jeopardy; nor shall he be allowed to work at his trade, within the jurisdiction of any local union, with anyone who does not carry a membership card in the Brotherhood."

> Constitution of the United Association of Journeymen Plumbers and Steamfitters of America and Canada (p. 43):—

"Sec. 182. No member of the United Association shall be permitted to work on any job where men other than members of the U. A. are installing work which comes under the jurisdiction of the United Association; local unions failing to comply with this law shall be subject to discipline in the form of an assessment, suspension or expulsion, by the President of the United Association, regardless of any agreement between employer and employee, except where, in the judgment

of the General President of the U. A., it is deemed otherwise."

26. Membership in plaintiff labor organizations, including the plaintiff, Brotherhood of Painters, Decorators and Paperhangers of America, and the plaintiff, United Association of Journeymen Plumbers and Steamfitters of America and Canada, and the respective plaintiff local unions, is open to all qualified persons, and such organizations freely admit qualified applicants into membership and impose no arbitrary or unreasonable requirements as a condition to membership. All of such labor organizations welcome to their ranks all persons in the respective lines of work who can meet the requirements as to skill prescribed by such organizations and who will submit to the discipline and by-laws of such unions and who are of good character.

27. All of the foregoing activities enumerated in the preceding paragraphs of this complaint, and in particular the obtaining and maintaining of agreements containing union shop or union security provisions, as carried on by labor organizations and their members and by the plaintiff labor organizations in the present action and individuals represented by such plaintiff labor organizations and in- [fol. 17] dividual plaintiffs herein, constitute the only effective means possessed by organized labor to accomplish economic security and otherwise deter the practices of employers which are destructive of public policy and of the interest of wage earners generally and of members of labor organizations and of plaintiff labor organizations herein, and said activities are indispensable concomitants of the right of employees to organize into labor organizations and to bargain collectively with employers and otherwise to advance their mutual interests and welfare.

28. The plaintiff employers in this case and other employers similarly situated have an interest in the maintaining and obtaining of collective bargaining agreements with labor organizations containing provisions requiring membership in a labor organization as a condition of employment or other provisions relating to union security in that such provisions in collective bargaining agreements with labor organizations have resulted and result in stability of employment relationships, the promotion of harmony

and cooperation as between employer and employees, the elimination of strife and discord both within the plant and as between rival labor organizations, the availability of sufficient skilled, competent and experienced artisans of the particular crafts, the stabilization of employes' compensation by the predetermination of applicable wage rates, the establishment of an effective means of increasing production.

29. At all of the times mentioned herein the defendant, Tampa Shipbuilding Company, and the defendant, St. Johns River Shipbuilding Company, were and are Florida corporations engaged in the building and construction of ships in the Cities of Tampa and Jacksonville respectively, employing approximately 30,000 and 10,000 employees respectively in such respective cities; at all times mentioned herein the defendant, Weir's Dry Cleaners & Laundry, Inc., was and is a corporation organized and existing under the laws of the State of Florida and engaged in the dry cleaning and laundry business in the City of Tampa, State of Florida, employing some 60 employees in that city; at all times mentioned herein the defendant, National Container Corporation, was and is a corporation organized and existing under the laws of the State of Florida and engaged in the [fol. 18] manufacture of various types of paper containers in the City of Jacksonville, State of Florida; at all times mentioned herein the defendant, Cigar Manufacturers Association of Tampa was and is a voluntary association of eighteen cigar manufacturers engaged in the business of making cigars in the City of Tampa, State of Florida, and such association is representative of such eighteen cigar manufacturers for the purposes of dealing with labor organizations concerning wages, hours of work, conditions of employment of employees, approximately 5,000 in number, employed by such eighteen cigar manufacturers. All of the defendants named in this paragraph are joined as defendants because they are parties to collective bargaining agreements with various of plaintiff labor organizations, as hereinafter more specifically set forth. No relief of any nature is asked or sought as to such defendants.

30. The defendant, Tampa Shipbuilding Company, did on the 16th day of July, 1941, enter into a collective bargaining agreement, specifying the wages, hours and work-

ing conditions of the employees employed by such defendant, with the following plaintiff labor organizations acting as the duly designated representative of such employees in the respective trades or crafts: Metal Trades Department, A. F. of L.; International Association of Machinists; International Brotherhood of Electrical Workers; International Brotherhood of Boilermakers, Iron Shipbuilders, Welders and Helpers of America; International Union of Operating Engineers; International Association of Sheet Metal Workers, United Association of Journeymen Plumbers and Steamfitters of America and Canada; United Brotherhood of Carpenters and Joiners of America; International Brotherhood of Painters and Decorators; International Hod Carriers, Building and Common Laborers; International Brotherhood of Blacksmiths, Drop Forgers and Helpers of America; International Association of Bridge and Structural Iron Workers of America; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America; International Federation of Technical Engineers, Architects and Draftsmen's Unions; and Office Employees Union No. 22,222. Such agreement is, by its terms and in fact, effective and in force until July 16, 1945, and thereafter automatically continues in effect [fol. 19] on a year to year basis. Among other provisions relating to working conditions, such agreement contains the following provision relating to union security:

"Article XVII, Sec. 1. When new employees are required, the Business Agent of the Craft concerned will be required to send qualified persons to the plant.

"Sec. 2. If the Union's Business Representatives are unable to furnish persons required for employment within a twenty-four (24) hour periods, the Management may employ such workers as may be available, with the understanding that such workers shall be required to file application for membership in their respective Union within a period of fifteen (15) days, if retained by the Company and the membership is acceptable to the Union operating under the terms of this agreement.

"Sec. 3. The Company agrees to retain in their employ only members of the Union which are or may become parties to this agreement except as otherwise provided herein."

31. The defendant, St. Johns River Shipbuilding Company, did on the 1st day of September, 1942, enter into a collective bargaining agreement, specifying the wages, hours, and working conditions of the employees employed by such defendant, with the following plaintiff labor organizations acting as the duly designated representative of such employees in the respective trades or crafts: Jacksonville Metal Trades Council of the Metal Trades Department, A. F. of L.; International Association of Machinists, Local Union No. 731; International Brotherhood of Electrical Workers, Local Union No. 177; International Brotherhood of Boilermakers, Iron Shipbuilders, (Welders) and Helpers of America, Local Union No. 199; International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 597; International Union of Operating Engineers, Local Union No. 673; International Association of Sheet Metal Workers, Local Union No. 435; United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local Union No. 234; United Brotherhood of Carpenters and Joiners of America, [fol. 20] Carpenters District Council of Jacksonville and Vicinity; International Brotherhood of Painters and Decorators, Local Union No. 164; International Hod Carriers, Building and Common Laborers, Local Union No. 647; International Brotherhood of Blacksmith, Drop Forgers and Helpers, Local Union No. 96; International Brotherhood of Teamsters, Chauffeurs, Wa-chousemen & Helpers of America, and Office Employes Union No. 23,433. Such agreement is, by its tems and in fact, effective and in force until September 1, 1945, and thereafter automatically continues in effect on a year to year basis. Among other provisions relating to working conditions, such contract contains the following provision relating to union security:

> "ARTICLE 9, Sec. 1. When new employees are required, the Business Representative of the Craft concerned send qualified persons to the plant.
>
> "The Unions agree to take into their membership such qualified men as are nominated by the Employer and agreed to by the Unions.
>
> "Sec. 2. Employer agrees to employ and retain in its employ only members in good standing in their respective unions, which are or may become parties to

this agreement. Should the Unions be unable to furnish the necessary employees, within forty-eight (48) hours after written notice has been served, the Employer may employ such workers as are available and retain such avai-able workers in its employ until the respective Union is able to furnish the necessary qualified workers, unless the available workers as employed by the Employer become members of the respective Unions."

32. The defendant, Weir's Dry Cleaners & Laundry, Inc., did on the 3rd day of January, 1941, enter into a collective bargaining agreement, specifying the wages, hours and working conditions of the employees employed by such defendant, with the International Union of Operating Engineers, Local Union No. 925. Such agreement is, by its terms and in fact, effective and in force until January 3, 1946, and thereafter automatically continues in effect on a year to year basis. Among other provision relating to [fol. 21] working conditions, such contract contains the following provision relating to union security:

"ARTICLE I. That all engineers and engineers' apprentices employed by the Employer shall be members in good standing of Local 925 I. U. O. E., and all vacancies shall be filled from the same organization."

33. The plaintiff, Tampa Florida Brewery, Inc., did on the 11th day of September, 1942, enter into a collective bargaining agreement, specifying the wages, hours and working conditions of the employees employed by such plaintiff, with the plaintiff International Union of Operating Engineers, Local Union No. 925. Such agreement is, by its terms and in fact, effective and in force until September 10, 1945, and thereafter automatically continues in effect on a year to year basis. Among other provisions relating to working conditions, such contract contains the following provision relating to union security:

"ARTICLE 1. All employees engaged in the care, operation and maintenance of the Mechanical Department and such other work that comes within the jurisdiction as defined by the constitution of the International Union of Operating Engineers, and the American Federation of Labor, shall be members in good standing

in the Union, and any and all vacancies shall be filled from this same organization.

"ARTICLE 2. The Union agrees to furnish competent Engineers, Operators, Maintenance Men (Engine and Boiler Room Firemen, Oilers and Helpers) upon call, within twenty-four hours. In the event that the Union cannot furnish same as provided, the Employer shall be at liberty to employ whoever he may desire, until such time as the Union can supply same, or the employee so employed may make application and be accepted into the Union."

34. The defendant, National Container Corporation, did on the 1st day of June, 1942, enter into a collective bargaining agreement, specifying the wages, hours, and working conditions of the employees employed by such defendant in its Kraft Pulp and Board operations at its Jacksonville, [fol. 22] Florida, plant employing approximately 400 employees, with the International Brotherhood of Paper Makers. Such agreement is, by its terms and in fact, effective in force until May 31, 1945, and thereafter automatically continues in effect on a year to year basis. Among other provisions relating to working conditions, such contract contains the following provision relating to union security:

"All new permanent employees shall, as a condition of employment, join their respective signatory Union Locals within thirty (30) days after being employed. Any employee who has been classified as an extra board employee shall, after thirty (30) accumulated days of work, be required, as a condition of employment to join the proper signatory Union Local.

"All present eligible permanent employees of the Company shall become members of the proper signatory Union Locals within thirty (30) days from the date of the signing of this contract. All present eligible permanent employees will be accepted as members by the Union.

"Any permanent employee who is now in good standing in the local signatory Unions or who after this date becomes or is reinstated as a member, shall, as a condition of employment, maintain such membership

in these Unions during the life of this agreement, but no action shall be taken by the Company which will render the Company liable to charges of unfair labor practices.

"The Unions shall not intimidate or coerce other employees to join the Union, nor will the Management countenance intimidation or coercion against eligible employees joining the Union.

"Employees of the Kraft Pulp and Board Division of the National Container Corporation who come under this agreement and are entitled to membership in the International Brotherhood of Paper Makers, and the International Brotherhood of Electrical Workers, include all those employed inside and outside the plant [fol. 23] in Jacksonville, except those persons employed in the exempt occupations listed in Memo Attachment No. 1."

Such defendant, National Container Corporation, did on the 1st day of June, 1944, enter into a collective bargaining agreement, specifying the wages, hours, and working conditions of the employees employed by such defendant in its Southern Container Operations or Division in Jacksonville, Florida, involving 150 employees, with the International Brotherhood of Pulp, Sulphite and Paper Mill Workers. Such agreement is, by its terms and in fact, effective and in force until June 1, 1945, and thereafter automatically continues in effect on a year to year basis. Among other provisions relating to working conditions, such contract contains the following provisions relating to union security:

"Sec. 2. All present eligible employees of the Company shall become members of the Signatory Union Locals within thirty (30) days from the date of the signing of this Agreement.

"All new employees shall as a condition of employment, join their respective signatory local union within sixty (60) days after being employed.

"Any employee who is now in good standing in the local signatory unions, or who after this date becomes or is reinstated as a member shall as a condition of employment, maintain such membership in these unions during the life of this Agreement.

"Employees of the National Container Corporation, the Southern Container Division, who come under this Agreement are entitled to Membership in this Union and includes all those employees of the plant, except those persons employed in the exempt occupations listed herewith:"

35. The defendant, Cigar Manufacturers Association of Tampa, did on the 14th day of October, 1941, enter into a collective bargaining agreement, specifying the wages, hours and working conditions of the employees employed by the eighteen cigar manufacturers who are members of the Asso- [fol. 24] ciation in Tampa, Florida, with the Cigar Makers' International Union of America. Among other provisions relating to working conditions, such contract contains the following provisions relating to union security:

"The employer further agrees to employ only members in good standing of the Cigar Makers' International Union of America as cigarmakers, pickers and packers, strippers, cigar machine operators, semi-machine operators, selectors, and clerks, trimmers, banders, cellophaners and mechanics, machine attendants, and all other productive employees except as provided in separate agreements with the separate departments. It is further understood and agreed that janitors, watchmen and office employees shall be exempt from the provision of this section.

"A member in good standing is one fully paid up in dues and assessments and who carries a membership card showing this standing in his or her respective local union."

It has been orally agreed to extend the union security provision of such agreement to June 30, 1945, and thereafter it automatically continues in effect on a year to year basis.

36. The plaintiff, McCloskey & Company, did on the 31st day of August, 1944, enter into a collective bargaining agreement, specifying the wages, hours and working conditions of the employees employed by such plaintiff, with the following plaintiff labor organizations, acting as the duly designated and recognized representative of such employees in the respective trades or crafts: Tampa Metal Trades

Council, A. F. of L.; Tampa Building Trades Council, A. F. of L.; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union No. 79; International Union of Bricklayers, Masons and Plasterers of America, Local Union No. 3 of Florida; International Brotherhood of Electrical Workers, Local Union No. B-108; International Association of Machinists, Local Union No. 570; International Brotherhood of Boilermakers, Iron Shipbuilders, Welders and Helpers of America, Local Union No. 433; International Union of Operating Engineers, Local [fol. 25] Union No. 925; International Association of Sheet Metal Workers, Local Union No. 57; United Association of Journeymen Plumbers and Steamfitters of America and Canada, Marine Pipe Fitters Local Union No. 766; United Brotherhood of Carpenters and Joiners of America, Local Union No. 696; International Brotherhood of Painters and Decorators, Local Union No. 88; International Hod Carriers, Building and Common Laborers, Local Union No. 1207; International Brotherhood of Blacksmiths, Drop Forgers and Helpers of America, Local Union No. 141; International Association of Bridge, Structural and Ornamental Iron Workers of America, Local Union No. 397; Metal Polishers, Buffers, Platers and Helpers International Union, Local Union No. 105; International Association of Heat and Frost Insulators and Asbestos Workers, Local Union No. 67; International Federation of Technical Engineers, Architects, and Draftsmen Union, Local Union No. 98; Hotel and Restaurant Employees International Alliance and Bartenders International League of America, Local Union No. 153; International Office Employees Union, Local Union No. 22222; Guards, Watchmen and Firefighters, Local Union No. 22,970. Such agreement is, by its terms and in fact, effective and in force until July 1, 1945, and thereafter automatically continues in effect on a year to year basis. Among other provisions relating to working conditions, such contract contains the following provision relating to union security:

> "ARTICLE IV—EMPLOYMENT. Sec. 1. When employees are required, the Company will call the Craft Union concerned to supply qualified persons for the plant. If the Union's representatives are unable to furnish persons required for employment within a twenty-four (24) hour period, the Employer may em-

ploy such workers as may be available with the understanding that such workers shall be required to file application for membership in the Union within a period of fifteen days, if retained by the Company, and their membership is acceptable to the Union."

"ARTICLE V—EMPLOYMENT CONDITIONS. Sec. 1. All employees covered by this Agreement shall [fol. 26] be members and remain members in good standing of their respective Union."

37. All of the collective bargaining agreements set forth in paragraphs 30, 31, 32, 33, 34, 35 and 36 were entered into by the parties voluntarily, and it is the desire of all parties to such contracts to continue such contracts in existence.

38. At the time each of said contracts above referred to was entered into, the Union parties to each of such contracts were the representative of a majority of the employees embraced under each of said contracts, and each of said labor organizations, parties to each of said contracts, were at the time such contracts were entered into, and are at the present time, the duly designated and selected and recognized bargaining representative chosen by a majority of the employees within the particular trade or craft under the jurisdiction of each of such organizations.

39. The contracts hereinabove specifically mentioned, and in particular the union shop provisions thereof, constitute valuable property rights to the plaintiff unions and their members and the individual plaintiffs, as well as to plaintiff, McCloskey & Company, and plaintiff, Tampa Florida Brewery, Inc., such value being in excess of Three Thousand Dollars exclusive of interest and costs. Under and by virtue of such agreements and the union security provisions thereof, such plaintiffs have realized and are realizing many benefits and advantages, including those enumerated in paragraphs 14 through 19, supra.

40. The plaintiff, R. J. Gould, doing business as the Gould Welding & Erecting Company, employs approximately 42 employees, all of whom are members in their respective crafts of plaintiffs, United Brotherhood of Carpenters and Joiners of America; Bricklayers, Masons and Plasterers International Union of America, and International Brotherhood of Electrical Workers, and all of which employees have

duly designated such organizations as their exclusive representatives for all purposes of collective bargaining. The said plaintiff, R. J. Gould, and the said labor organizations have been since December, 1944, and still are, in the proc- [fol. 27] ess of negotiating a collective bargaining agreement covering wages, hours and working conditions of the employees employed by said Company. Although such plaintiff and such plaintiff labor organizations are desirous of entering into a union shop agreement, they were and are being prevented from so doing by reason of the said Anti-Labor Amendment, as hereinafter more specifically described.

41. Plaintiff labor organizations are involved in numerous other situations similar to the situation above described with respect to plaintiff, R. J. Gould, in the State of Florida.

42. The said defendants, Tampa Shipbuilding Company and St. Johns River Shipbuilding Company, and the said plaintiffs, Tampa Florida Brewery, Inc., and McCloskey & Company, are now and have been each engaged in interstate commerce, shipping their products to states other than Florida and receiving their raw materials from states other than Florida. The said plaintiff, R. J. Gould, and the said defendant, Weir's Dry Cleaners & Laundry, Inc., are each engaged in intrastate business, that is to say, their business is confined to the City of Tampa, Florida, and its environs.

43. The members of the plaintiff labor organizations and the officers, agents and employees of said organizations and the individual members of such organizations and of all other organizations of employees having members who are residents of the State of Florida and are organized for the purpose of dealing with employers concerning hours of employment, rates of pay and working conditions, constitute a class situated similarly to the plaintiff labor organizations and the individual plaintiffs in this case with respect to the matters herein alleged and are so numerous as to make it impossible or impractical to bring them all before this Court, but the rights and interests of all persons with respect to the things and matters in this complaint alleged are fairly represented by the plaintiff labor organizations and the individual plaintiffs herein and these plaintiffs have heretofore been authorized to represent said persons with respect to the matters in this complaint alleged and to bring this suit for and on behalf of them.

selves and all other organizations affiliated with the Ameri-
[fol. 28] can Federation of Labor or with the plaintiff, Florida State Federation of Labor, and persons and individuals similarly situated. Plaintiff labor organizations herein bring this action on behalf of and as representative of the interests and rights of the individual members of such organizations who are citizens of the United States and are residents of the State of Florida.

44. The defendant, J. Tom Watson, is the duly elected and acting Attorney General of the State of Florida and is authorized and empowered, and it is his duty, to enforce all laws of the State of Florida; the defendant, Millard Caldwell, is the duly elected and acting Governor of the State of Florida and is chief executive of such state, and it is his duty to see that all laws are enforced and executed; the defendant, J. Rex Farrior, is the duly elected and acting State's Attorney of the 13th Judicial Circuit in and for Hillsborough County, Florida, and it is his duty under the laws of Florida to enforce in Hillsborough County all laws of said State; the defendant, Hugh Culbreath, is the duly elected and acting Sheriff of Hillsborough County, and it is his duty to see that all laws are enforced and executed in said Hillsborough County. It is the duty of said defendants to take all steps necessary for the enforcement of all laws of the State of Florida, including the institution of civil as well as criminal proceedings.

IV

The Law Alleged to Be Invalid

45. At the 1943 regular session of the Legislature of the State of Florida, the said legislature duly adopted and passed a resolution designated as House Joint Resolution No. 13, which said Resolution, after being so duly adopted by said Legislature, was filed in accordance with law in the office of the Secretary of State on May 8, 1943. Said Resolution was as follows:

> "A Joint Resolution Proposing an Amendment to Section 12 of the Declaration of Rights in the Constitution of the State of Florida, Relating to Double Jeopardy, Self-Incrimination, Due Process of Law, and the Taking of Private Property Without Just Com-
> [fol. 29] pensation, by Providing the Right of Persons

to Work Shall Not Be Denied or Abridged on Account of Membership or Non-Membership in Any Labor Union, or Labor Organization; and Providing that the Right of Employees to Collectively Bargain Shall Be Preserved.

"Be It Enacted by the Legislature of the State of Florida:

"That the following amendment to the Constitution of the State of Florida, Section 12 of the Declaration of Rights of Said Constitution, be and the same is hereby agreed to, and the same shall be submitted to the qualified electors of the State of Florida for ratification or rejection at the next ensuing General Election, that is to say, that Section 12 of the Declaration of Rights of the Constitution of the State of Florida, be amended so as to read as follows:

"Section 12. No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken without just compensation. The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer."

46. Thereafter said Resolution was ratified by the people of the State of Florida, voting at a general election held on the 7th day of November, 1944. The total vote cast at said election was 270,630; voting for said Resolution were 147,860; voting against said Resolution were 122,770. Said Resolution, under the laws of the State of Florida, immediately upon said majority vote on said date, then became effective and operative as a law of the State of Florida and as an amendment to the Constitution of the State of Florida. [fol. 30] Such law is commonly known as and called the "Anti-Labor Amendment" as aforesaid.

47. The said law is intended and purports to make unlawful the continuation in effect or the entering into of any

provision of any collective bargaining agreement between any labor organization and any employer in the State of Florida, whereunder union membership is required as a condition of employment.

V

Manner in Which Said Law Violates the Federal Constitution and Deprives Plaintiffs of Rights Guaranteed Thereunder

48. The said purported law hereinabove referred to and known as the "Anti-Labor Amendment" is void, unenforceable, unconstitutional and of no legal effect whatsoever for the following reasons, to-wit:

(1) Said alleged law prevents individuals and members of labor organizations, including the individual plaintiffs herein and the members of the plaintiff labor organizations herein, from accomplishing the ultimate purpose and objective of such individuals in assembling and associating together into labor organizations and in exercising the rights of speech, press and petition while so assembled, or as a part of such assemblage, and thereby denies, impairs and previously restrains the exercise by such individuals and organizations of their rights of assembly, speech, press, and petition guaranteed under the First Amendment to the United States Constitution as protected against invasion by the State by the Fourteenth Amendment, as well as protected by the Civil Rights Statutes hereinabove set forth. Enforcement of the said law will deprive the plaintiffs of the benefits and privileges of mutual association and assembly and of the mutual obligations heretofore assumed by members of the plaintiff organizations in such mutual association and assembly as guaranteed by such First Amendment, [fol. 31] and would impair and restrain the exercise of rights as alleged in paragraphs 14 through 19, supra, all in violation of the said First Amendment.

(2) Said alleged law impairs and invalidates any provision in any collective bargaining agreement between any employer and any labor organization which provides that membership in such labor organization shall be a condition of employment, and, in particular,

invalidates and impairs the obligations of the existing contracts entered into by the plaintiffs, as hereinbefore specifically set forth, and further, said alleged law makes inoperative, ineffective and invalid, and otherwise impairs the obligations and agreements mutually and voluntarily assumed by and among members of labor organizations, including plaintiff labor organizations and their members, as expressed in their constitutions and by-laws, and in particular as is expressed in the constitution and by-laws of the plaintiffs, Brotherhood of Painters, Decorators and Paperhangers of America and United Association of Journeymen Plumbers and Steamfitters of America and Canada, hereinabove referred to, all in violation of Article I, Section 10, of the Constitution of the United States providing that no State shall make laws impairing the obligations of contracts.

(3) Said alleged law prevents labor organizations and their members, including plaintiff labor organizations and their members and the individual plaintiffs herein, from negotiating, bargaining for, and entering into mutually agreeable collective bargaining agreements containing union shop or union security provisions, and is in conflict with the provisions of the National Labor Relations Act, Title 29, Sections 151 to 166, U. S. Code Annotated, and violates the public policy and law of the United States with respect to employees engaged in interstate commerce or engaged in occupations affecting interstate commerce as laid down in Section 151 of said Code, and is in conflict with and violates and seeks to abrogate rights and [fol. 32] privileges conferred on employees, members of labor organizations and labor organizations, including the individual plaintiffs in this case and the plaintiff labor organizations and their members by Sections 157, 158 and 159 of said Code aforesaid, all in violation of Article VI of the United States Constitution providing that the laws of the United States shall be the supreme law of the land.

(4) The said law prevents labor organizations and employers, including the plaintiff labor organizations and employers in this case, from negotiating and entering into mutually agreeable collective bargaining

agreements containing union shop or union security provisions, or requiring employees to become and remain members of labor organizations as a condition of employment, and thereby deprives such labor organizations and employers, including the plaintiff labor organizations and employers, of property rights and liberties secured, protected and guaranteed against infringement by the States under the Fourteenth Amendment to the United States Constitution, and in particular of the right and liberty freely to contract protected under the due process clause of the Fourteenth Amendment to the United States Constitution, all in violation of the said Fourteenth Amendment to the United States Constitution.

(5) The said alleged law denying plaintiff labor organizations and plaintiff employers and the individual plaintiffs of liberties and civil and property rights, as heretofore set forth, is arbitrary and unreasonable and constitutes an improper and unlawful exercise by the State of Florida of its police power. Said law is without rational basis, is not justified by existing circumstances, and is not in the public interest. It imposes hardships in disproportion to any possible public benefit, and the interests of the public generally are not such as to require or justify the enactment of said law.

[fol. 33] (6) The said alleged law, by prohibiting agreements between labor organizations and employers, which contain union shop or union security provisions, discriminates against the class of members of labor organizations, and in particular against plaintiff labor organizations and their members and the individual plaintiffs herein on the one hand, and in favor of non-members of labor organizations on the other. Such alleged law constitutes class legislation passed in the interest of the class of non-union employees and not in the interest of the public generally. Accordingly, such alleged law is in violation of the provisions of the Fourteenth Amendment to the United States Constitution requiring that no State shall deny any person within its jurisdiction the equal protection of the laws.

(7) Said alleged law constitutes an invasion, and threatens destruction, of privileges, rights and immu-

nities secured to plaintiffs by the Constitution and Laws of the United States and invades and impairs the personal and property rights and liberties of the plaintiffs, including the right of plaintiffs to maintain existing contracts and the liberty freely to contract, all protected and guaranteed under the United States Constitution.

VI

Irreparable Injury Justifying Temporary and Permanent Injunction

49. The defendants, J. Tom Watson, as Attorney General of the State of Florida, Millard Caldwell, as Governor of the State of Florida, J. Rex Farrior, as State's Attorney of Hillsborough County, Florida, and Hugh Culbreath, as Sheriff of Hillsborough County, Florida, and each of them, contend that plaintiffs, by observing the provisions of their existing collective bargaining agreements and the provisions of existing constitutions and by-laws relating to union security and requiring membership in a labor organization as a condition of employment, violate said "Anti-Labor [fol. 34] Amendment," and further contend that said "Anti-Labor Amendment" prohibits plaintiffs from entering into or renewing collective bargaining agreements containing any such provisions.

50. It is the intent and purpose of such defendants to force plaintiffs to comply with said illegal law and to enforce compliance against said plaintiffs by civil and criminal proceedings, and to prevent plaintiffs from realizing the benefits and advantages of their existing contracts and from entering into similar contracts in the future. Such defendants threaten to and will, unless enjoined by this Court, file criminal and civil complaints against and will prosecute the plaintiff labor organizations and the plaintiff employers, their officers and agents, and the individual plaintiffs herein, if they continue to observe the provisions of existing collective bargaining agreements relating to union security or if they attempt to observe the provisions of existing constitutions and by-laws of plaintiff labor organizations referring to union security or if they enter into or renew collective bargaining agreements containing provisions relating to union security or providing that membership in the organization shall *shall* be a condition of em-

ployment, the acts of such defendants, under color of the alleged law, will work an irreparable injury and damage to labor unions and their members, and to employers, and particularly these plaintiffs, by reason of the loss of present and prospective benefits derived and to be derived from such contracts, as more particularly hereinbefore alleged, and will result in interminable litigation and multiplicity of prosecutions and legal proceedings and will cause widespread disruption to employment relations and a considerable interference with production. Such threatened acts of defendants will further substantially interfere with, impair and destroy operations of the businesses of plaintiff employers and of other employers similarly situated throughout the State, and will cause and result in the disorganization and disintegration of plaintiff labor organizations and others similarly situated.

51. Specifically, the defendant Attorney General, J. Tom Watson, has threatened to institute immediate proceedings in quo warranto against the defendant, Tampa Shipbuild[fol. 35] ing Company, the defendant, St. Johns River Shipbuilding Company, the defendant, National Container Corporation, the plaintiff, McCloskey & Company, the plaintiff, Tampa Florida Brewery, Inc., and other employer corporations with whom plaintiff labor organizations now have collective bargaining agreements containing union shop provisions, seeking to annul and cancel the corporate franchise under which said corporations are now functioning by grant or privilege from the State of Florida to do business in Florida unless said corporations immediately desist from observing the provisions of such existing collective bargaining agreements requiring membership in plaintiff labor organizations as a condition of employment. Said defendant, J. Tom Watson, has prepared and will, unless restrained by this Court, immediately file said proceedings in quo warranto against said employers. The refusal or failure of any of such employers to enforce said provisions in said contracts relating to union security in said existing collective bargaining agreements will cause immediate and irreparable injury and damage to plaintiff labor organizations who are parties to such existing agreements, and will cause immediate and irreparable injury and damage to plaintiff, McCloskey & Company, and plaintiff, Tampa

Florida Brewery, Inc., as well as other employers similarly situated, in that the benefits and advantages under such agreements will be lost and disruption to production will inevitably result if there is any failure to continue to observe the union security provisions of its existing collective bargaining agreement.

52. Further, said defendant, J. Tom Watson, has threatened the plaintiff labor organizations, their officers and agents and the individual plaintiffs herein and other labor organizations and officers of labor organizations throughout the State of Florida who are situated similar to plaintiff organizations with immediate criminal prosecutions under Section 833.01 of the Florida Statutes, 1941, providing for fine and imprisonment for any persons conspiring to violate any law of the State of Florida, unless sugh plaintiffs and others give up their existing agreements in respect to union security and unless they refrain from entering into or renewing any such agreements, and said J. Tom Watson, as Attorney General, is giving effect to said threats at the present time in the following manner: He has publicly, [fol. 36] through the press of Florida, as the head of all law enforcement agencies in this State, issued orders to all prosecuting attorneys, sheriffs, constable and other law enforcement officers in the State to institute immediately prosecutions in court against all persons, including these plaintiffs, who are violating said "Anti-Labor Amendment" by recognizing or entering into collective bargaining agreements with provisions as hereinabove set out, and said officers are now preparing such criminal proceedings to be instituted against plaintiffs and all other persons similarly situated to plaintiffs who are not abiding by said "Anti-Labor Amendment," and the said J. Tom Watson is himself preparing warrants which will be immediately issued and served upon all such persons, including plaintiffs, who are refusing to comply with said "Anti-Labor Amendment." Such threats have resulted and will result, unless restrained, in loss of personal, civil and property rights by plaintiffs, including the benefits of assemblage, liberty of contract, and the advantages and benefits of existing and recognized contracts, and in loss of present and prospective members by plaintiff labor organizations, and such threats imperil the security of plaintiff labor organizations and the security of their members.

53. The said J. Tom Watson, as Attorney General, has also, through the press of Florida, threatened to prosecute all persons, including the plaintiffs to this cause, who execute or renew any collective bargaining agreement containing a provision requiring membership in a union as a condition of employment; by reason of said threats said plaintiff, J. R. Gould, has been prevented from entering into collective bargaining agreements containing union security provisions, although anxious and willing so to do, but unless he is permitted to enter into such contracts he will suffer irreparable damage and injury from loss of benefits and advantages under such contracts by reason of threatened concerted action by his employees for failure to enter into such agreement. Further, in respect to said plaintiff, J. R. Gould, he has suffered and is suffering irreparable injury and damage by reason of his inability to enter into a union shop agreement because of said threats of said defendant, J. Tom Watson, as Attorney General of Florida, due to the fact that he is and has been unable to secure sufficient skilled labor properly to conduct his business, and [fol. 37] unless said defendant, J. Tom Watson, as Attorney General of Florida, is restrained from enforcing said invalid law he will continue to suffer irreparable damage and injury. Unless this Honorable Court enjoins and restrains said J. Tom Watson, as Attorney General, and other defendant law enforcement officials, from enforcing said law, the plaintiffs herein will be immediately subjected to criminal prosecutions and injunction suits, and wholesale prosecutions, and injunction suits will be instituted against other persons in the State of Florida similarly situated to plaintiffs. All of such suits are in the course of preparation at this time and will be immediately filed, and there will result a great multiplicity of law suits.

54. Enforcement of the said "Anti-Labor Amendment" by the said defendant prosecuting officials will deprive the plaintiff labor organizations of the benefits, advantages and privileges of mutual association and assembly and of the mutual obligations heretofore assumed by members of such plaintiff organizations in such mutual association and assembly. It would deprive such plaintiff labor organizations and all the members of such plaintiffs of the benefits, rights, privileges and immunities heretofore received and now possessed under contracts made by and with plaintiff

labor organizations and by and among the members thereof, and will prevent such plaintiffs and all members of such plaintiffs from engaging in all of the activities hereinbefore set forth and from securing the benefits, objectives and purposes of their mutual association and assembly as hereinabove set forth, and will irreparably injure and eventually destroy the plaintiff Labor organizations. The acts of said defendants as threatened and intended aforesaid will interfere with and prevent and cause a cessation and denial of collective bargaining relations between the plaintiff labor organizations and employers and interfere with and prevent the renewal and continuance of contracts and agreements now in effect between the said plaintiffs and employers and others, including contracts which by their terms provide for automatic renewal. The filing of criminal complaints against or the prosecuting of one or more of plaintiffs, or one or more members or officers of plaintiff unincorporated associations will, during the pendency of such prosecution, work all of the said irreparable injury and damage to all of the plaintiffs and all of the members of the [fol. 38] plaintiff unincorporated associations and all of the members of labor unions in the State of Florida.

55. The said defendant prosecuting officials threaten to and will enforce the provisions of said unconstitutional statute, and the plaintiffs believe that they will do so unless restrained by an injunction order of this Court; that by reason of the matters hereinbefore alleged, there exists a controversy between these plaintiffs and the class they represent, and the defendants and the class they represent, and plaintiffs have no plain, speedy or adequate remedy at law; that by reason of the above and foregoing it is necessary for the protection of the rights of these plaintiffs that, pending a determination of this action, plaintiffs be granted a temporary injunction against the defendants, J. Tom Watson, as Attorney General of Florida, Millard Caldwell, as Governor of Florida, J. Rex Farrior, as State's Attorney of Hillsborough County, Florida, and Hugh Culbreath, as Sheriff of Hillsborough County, Florida, and that thereafter the defendants be permanently enjoined from enforcing the provisions of said illegal law.

Wherefore, Plaintiffs Pray:

1. That this action be heard by a three-judge court under Section 266 of the Judicial Code, U. S. C. A., Title 28, Section 380.

2. That the Court shall adjudge the said Florida "Anti-Labor Amendment" unconstitutional, void and unenforceable for the reasons heretofore stated.

3. That the Court shall issue a temporary and final injunction, after notice and hearing, against the defendants, J. Tom Watson, Millard Caldwell, J. Rex Farrior and Hugh Culbreath, in their official capacities, and against all other parties represented as a class by said defendants, being the local prosecuting officials of all the counties of the State of Florida and all other officials of Florida who would have authority to take any action towards the enforcement of said law, and that such persons and defendants be enjoined and restrained from taking any steps whatsoever in court or out of court looking to the enforcement of the provisions of said law and specifically from bringing or continuing any prosecutions for alleged violations of said law by reason of [fol. 39] any person, including plaintiffs herein, continuing to observe provisions of existing collective bargaining agreements in respect to union security or requiring membership in a labor organization as a condition of employment or because of entering into any such collective bargaining agreements containing such provisions and from in any wise interfering with the activities of the plaintiffs and the class represented by them by reason of any of the provisions of said law.

4. For such other and further equitable relief as the plaintiffs may show themselves entitled to have, and

5. For all costs in this proceeding.

Joseph A. Padway, Herbert S. Thatcher, 736 Bowen Building, Washington 5, D. C.; Edwin C. Coffee, Law Exchange Building, Jacksonville 2, Florida; J. Dress Pannell, 206 Brotherhood Building, Harrisburg, Pennsylvania; Pat Whitaker and Tom Whitaker, Tampa Gas Building, Tampa, Florida; ——— ———, ——— ———, Counsel for Plaintiffs.

[fol. 40] *Duly sworn to by Glenn McClung (oral omitted in printing.*

[fol. 41] IN UNITED STATES DISTRICT COURT

AMENDMENT TO BILL OF COMPLAINT—Filed March 12, 1945

Now come plaintiffs in the above cause, by their undersigned attorneys, and before any hearing in said cause, moves the court for an order permitting plaintiffs to amend their bill of complaint in the following particulars:

By adding to said bill of complaint immediately after the name of J. Rex Farrior, as State Attorney of Hillsborough County, Florida, the following:

Joseph E. Williams as County Solicitor of the Criminal Court of Record of Hillsborough County, Florida, who is vested with authority by law and whose duty it is to prosecute upon information filed by him, all violations of law less than capital, in the Criminal Court of Record of Hillsborough County Florida, and the said Joseph E. Williams has threatened and intends to prosecute the plaintiffs on account of closed shop provisions contained in the contracts set forth in the bill of complaint, unless enjoined by this Honorable Court, and is preparing so to do, and all other allegations in the bill of complaint with reference to the intentions, preparations and activities for the institution of suits, both civil and criminal, made against the defendants, J. Tom Watson as Attorney General of the State of Florida, and J. Rex Farrior, as State Attorney of Hillsborough County, Florida, are hereby specifically made to apply to this defendant, Joseph E. Williams, as County Solicitor of the Criminal Court of Record of Hillsborough County, Florida, to the same extent as though the same were [fol. 42] set forth and realleged herein, and made to apply to this defendant to the same extent as though he had been included as a defendant in the original bill of complaint.

Joseph A. Padway, Herbert S. Thatcher, Edwin C. Coffee, J. Dress Pannell, Pat Whitaker, Tom Whitaker, Pat Whitaker, Counsel for Plaintiffs.

IN UNITED STATES DISTRICT COURT

AMENDMENT—Filed March 12, 1945

The above matter coming on for hearing upon motion of plaintiffs to amend their bill of complaint by adding

thereto an additional party defendant, to-wit: Joseph E. Williams, as County Solicitor of the Criminal Court of Record of Hillsborough County, Florida, it appearing to the Court that no one can be injured or harmed by said amendment, but that said amendment is merely a formal amendment, it is, thereupon,

Considered, Adjudged, Ordered and Decreed that the motion of plaintiffs to amend their bill of complaint be, and the same is hereby allowed.

Done and Ordered at Tampa, Florida, this the 12th day of March, 1945.

William J. Barker, District Judge.

[fol. 43] In United States District Court

Motion to Amend Bill of Complaint—Filed May 17, 1945

Now come plaintiffs in the above cause and respectfully show unto the court that since the institution of the above suit and since the filing of the answer by the defendant Joseph E. Williams, as County solicitor of the Criminal Court of Record of Hillsborough County, Florida, the term of office of the said Joseph E. Williams as County Solicitor has ended and he no longer occupies said office; that Luther W. Cobbey is now the County Solicitor of the Criminal Court of Record in and for Hillsborough County, Florida, and has been since the — day of April, 1945; that plaintiffs do hereby re-aver and re-affirm all of the matters and things in their bill of complaint alleged against the defendant Joseph E. Williams as County Solicitor of the Criminal Court of Record of Hillsborough County, Florida, as well as J. Rex Farrior as State Attorney of Hillsborough County, Florida, to the same extent as though the same were re-alleged and set out in full herein against Luther W. Cobbey as County Solicitor of the Criminal Court of Record of Hillsborough County, Florida, and do hereby allege that the said Luther W. Cobbey as such County Solicitor adopts, or threatens to adopt and continue the actions of his predecessor in enforcing the anti labor amendment adopted at the general election held in November, 1944, which is here under attack and which is invalid and in violation of the constitution of the United States, and plaintiffs do hereby

[fol. 44] move the court for an order to amend the bill of complaint, as well as the previous amendment thereto, by striking the name of Joseph E. Williams wherever it appears and inserting in lieu thereof the name of Luther W. Cobbey, and that the allegations in said bill of complaint, as well as the amendment thereto, be applied and treated as though made against the defendant Luther W. Cobbey as said County Solicitor to the same extent and in the same manner as though the said Luther W. Cobbey had been originally named as such defendant.

Plaintiffs further show unto the court that through misprision and inadvertence, there is a typographical error in the bill of complaint appearing in the third line from the bottom of page 13 of the bill of complaint, where it is alleged "paragraphs 14 through 19 hereof". Plaintiffs allege that this is a typographical error and should read "paragraphs 14 through 20 hereof". Plaintiffs further allege that this same error appears in other subsequent places in the bill of complaint and plaintiffs pray that the court enter an order permitting the amendment to said bill of complaint to read "paragraphs 14 through 20 hereof," instead of "paragraphs 14 through 19 hereof."

Plaintiffs further show unto the Court that there appears in the bill of complaint another error arising from misprision and inadvertence at the bottom of page 31 of the bill of complaint, in sub-paragraph 3, in that there is omitted certain language which should have been included therein, and plaintiffs pray the court to permit them to amend their bill of complaint by adding at the bottom of page 31, in said sub-paragraph 3, after the word "code" in the second line from the bottom of said page the following: "and also as laid down in Section 102 of the Norris LaGuardia Act, 29 U. S. C. 101". And on page 32 of the bill of complaint, in the 4th line from the top of said page, following the word "Sections" insert the number "102" preceeding the number "157".

Joseph A. Padway, Herbert S. Thatcher, Edwin C. Coffee, J. Dress Pannell, Pat Whitaker, Tom Whitaker, Pat Whitaker, Counsel for Plaintiffs.

[fol. 45] *Duly sworn to by Glenn A. McClung. Jurat omitted in printing.*

ORDER GRANTING MOTION

The above motion coming on this day for hearing, it is, thereupon,

Ordered that said motion be, and the same is hereby, granted.

Done and Ordered at Tampa, Florida, this 17th day of May, A. D. 1945.

William J. Barker, District Judge.

[fol. 46] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS COMPLAINT—Filed February 28, 1945

The defendants move the court as follows:

1. To dismiss the action because the complaint fails to state a claim against the defendants, or either of them, upon which relief can be granted.

2. To dismiss the action because the complaint fails to state a claim in favor of the plaintiffs, or either of them, upon which relief can be granted.

3. To dismiss the action because the same was brought in the Southern District of Florida, whereas the principal defendants named in it are the governor of Florida and the Attorney General of Florida, who reside in the Northern District of Florida, to wit: in the city of Tallahassee, Leon County, Florida, and have and maintain their offices and perform their official duties at the capitol of the State of Florida in said city of Tallahassee, and not in said Southern District of Florida.

4. To dismiss the action because it is not made to appear by any issuable allegations of fact in said complaint contained that the amount involved therein exceeds, exclusive of interest and costs, the sum of value of Three Thousand Dollars ($3,000.00).

5. To dismiss the action because it is not made to appear by any issuable allegations of fact in said complaint contained that the said plaintiffs, or either of them, or any member of any class attempted to be described in said complaint have or will suffer any irreparable injury as a result

of the acts or intentions of the defendants charged in said complaint, or either or any of them.

[fol. 47] 6. To dismiss the action because it is not made to appear by any issuable allegations of fact in said complaint contained that the said defendants, or either of them, have committed or intend to commit any act or done or intend to do any matter or things that would cause or inflict upon the plaintiff's or either of them, or upon any member of any class attempted to be described in said complaint an irreparable injury against which any restraining order or injunction, either temporary or permanent should issue or be served upon any of the defendants herein.

7. To dismiss the action because it is not made to appear by any issuable allegations of fact in said complaint contained that the members of the said alleged involuntary associations have ever authorized the said plaintiffs who claim to be such voluntary associations to bring the said suit or to participate in any manner therein.

8. To dismiss the said action because the said alleged involuntary associations are under the law but partnerships, and the members of said partnership are not made parties to the said complaint of this suit.

9. To dismiss the said action because it is not made to appear that said alleged members of said alleged class are in fact such, or that they or either of them ever authorized the said plaintiffs or either of them to prosecute this action or to represent them or any of them herein.

10. To dismiss the action because the State Constitutional Amendment inveighed against in a proper, legitimate and valid exercise of the police power reserved in the sovereign State of Florida and not surrendered to the United States of America and is, therefore, invulnerable to the attacks leveled at it on United States Constitutional and statutory grounds.

[fol. 48] 11. To dismiss the action because, notwithstanding the United States Constitutional and statutory grounds raised by the plaintiffs, said State Constitutional Amendment is a fair and legitimate exercise of the sovereign governmental power of the State of Florida to secure, promote and preserve the general welfare of the inhabitants of said state.

12. To dismiss the action because plaintiffs' bill charges that the constitutional amendment attacked denies, impairs and restrains plaintiffs in the exercise of their rights of assembly, speech, press and petition guaranteed by the First and Fourteenth Amendments to the United States Constitution, and certain civil rights statutes, but fail to allege facts or show wherein said Florida constitutional amendment deprives plaintiffs of said guaranteed rights.

13. To dismiss the action because plaintiffs' bill charges that the constitutional amendment attacked impairs the obligation of plaintiffs' closed-shop agreements and the agreements between members of labor organizations in violation of Article I, Section 10, of the Constitution of the United States, but fails to allege facts or show wherein said Florida constitutional amendment violates said Article I, Section 10, of the United States Constitution.

14. To dismiss the action because plaintiffs' bill charges that the constitutional amendment attacked is in conflict with provisions of the National Labor Relations Act and violates the public policy and the law of the United States and Article VI of the Constitution of the United States, but fails to allege facts or show wherein said Florida constitutional amendment violates said National Labor Relations Act or Article VI of the United States Constitution.

15. To dismiss the action because plaintiffs' bill charges that the constitutional amendment attacked violates the [fol. 49] Fourteenth Amendment of the United States Constitution in that it denies to the plaintiffs property rights and the right freely to contract protected under the due process clause of said Fourteenth Amendment, but fails to allege facts or show wherein said Florida Constitutional Amendment violates the due process clause of said Fourteenth Amendment.

16. To dismiss the action because plaintiffs' bill charges that the constitutional amendment attacked is an unreasonable exercise of the police power of the State, but fails to allege facts or show wherein said Florida constitutional amendment is an unreasonable exercise of the police power of the State.

17. To dismiss the action because plaintiffs' bill charges that the constitutional amendment attacked constitutes class

legislation and violates the equal protection of the laws provision of the Fourteenth Amendment to the United States Constitution, but fails to allege facts or show wherein said Florida constitutional amendment violates said clause of said Fourteenth Amendment.

18. To dismiss the action because plaintiffs' bill charges that the constitutional amendment attacked invades and destroys plaintiffs' privileges, rights and immunities, personal and property rights, and the right freely to contract guaranteed by the United States Constitution, but fails to allege facts or show wherein said Florida constitutional amendment invades, destroys and denies to plaintiffs any rights guaranteed by said United States Constitution.

19. To dismiss the action because the bill of complaint is not the proper remedy under which to make the test that it seeks, to wit: the constitutionality of a constitutional provision of the law of Florida as the same might conflict [fol. 50] with any provision of the Constitution of the United States.

20. To dismiss the action because the bill is an attempt to enjoin the Attorney General in the performance of the duties of his office.

21. To dismiss the action because the bill seeks to enjoin official functioning of a State constitutional officer through the federal court without any factual showing of overt acts upon which to predicate same.

22. To dismiss the action because if the bill seeks to have the federal court determine the federal constitutionality of a provision of the State constitution of the State of Florida, the remedy sought by which to do this is improper in that precipitant attempt is made to interfere with performance by a constitutional state officer of his official functions in advance of any factual showing sufficient to warrant the same.

23. To dismiss the action because declaratory judgment proceedings with proper parties is the only proper way by which to put in issue before the courts the constitutional interpretation involved.

J. Tom Watson, Attorney General. Sumter Leitner, Assistant Attorney General.

In United States District Court

[fol. 51] Motion to Dismiss of Defendant Cigar Manufacturers' Association of Tampa—Filed March 2, 1945

The defendant, Cigar Manufacturers' Association of Tampa, moves the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

2. To dismiss the action because the complaint does not pray for any relief against said defendant but specifically pleads "no relief of any nature is asked or sought as to such defendants (referring to defendants including movent)."

3. To dismiss said action for the reason that the plaintiffs do not jointly, severally or in the alternative assert any right to relief as against said defendant.

4. To dismiss said action for the reason that upon the facts and the law as pleaded by the plaintiffs, they have shown no right to relief against the defendant.

Ray C. Brown, Attorney for Defendant Cigar Manufacturers' Association of Tampa.

Proof of Service

I hereby certify that I served the above and foregoing motion on the attorneys for the plaintiffs by enclosing true and correct copies of the foregoing motion in envelopes and sealing the same and affixing sufficient United States postage thereto to prepay the same by United States mail and addressed to said Attorneys at their last known addresses as follows: to-wit:

Joseph A. Padway, Esq., 736 Bowen Building, Washington, 5, D. C. Herbert S. Thatcher, Esq., 736 Bowen Building, Washington, 5, D. C. Edwin C. Coffee, Esq., Law Exchange Building, Jacksonville, 2, Florida. J. Dress Pannell, Esq., 206 Brotherhood Building, Harrisburg, Pennsylvania. Pat Whitaker, Esq., Tampa Gas Building, Tampa, 2, Florida. Tom Whitaker, Tampa Gas Building, Tampa, 2, Florida.

[fol. 52] by depositing the same in the United States Post Office at Tampa, Florida, on the 1st day of March, A. D. 1945.

Ray C. Brown, Attorney for Defendant, Cigar Manufacturers' Association of Tampa, 1203 Citizens Building, Tampa 2, Florida.

In United States District Court

Motion to Dismiss of Tampa Shipbuilding Company, Inc.
Filed March 3, 1945

To the Honorable Judge of the Above Styled Court:

Comes now Tampa Shipbuilding Company, Inc., one of the defendants named in the above styled complaint, and moves the Court to dismiss or drop it as a party defendant on the following grounds:

1. Because the complaint does not seek or request by prayer, or otherwise, any relief or affirmative action of any kind or character as against this defendant.

2. Said complaint does not set forth any matter or thing requiring answer by Tampa Shipbuilding Company, Inc.

3. Because it appears from the complaint that Tampa Shipbuilding Company, Inc., is simply referred to in the complaint by way of illustration, and not in any sense of the word is it a real or nominal party defendant to the cause within the meaning of the laws of the United States or practice of this Court.

Wherefore, Tampa Shipbuilding Company, Inc., respectfully calls the Court's attention to the matters above set forth and asks that it be dismissed or dropped as party defendant.

Dated at Tampa, Florida, this 2nd day of March, 1945.

Reeves, Allen & Johnson, By LeRoy Allen, Attorneys for defendant, Tampa Shipbuilding Company, Inc.

[fol. 53] IN UNITED STATES DISTRICT COURT

ANSWER OF HUGH CULBREATH, AS SHERIFF OF HILLSBOROUGH COUNTY, FLORIDA—Filed February 27, 1945

Comes now Hugh Culbreath, as Sheriff of Hillsborough County, Florida, and for answer to the complaint filed herein, says:

1. As to Paragraph I, defendant admits that the matter in controversy exceeds Three Thousand Dollars ($3000.00) and is without knowledge or information sufficient to form a belief as to the other jurisdictional requirements alleged in said paragraph.

2. As to Paragraph II, this defendant admits that the purpose of such action is as therein set out and denies that this defendant has threatened either civil or criminal proceedings under said law and denies that any action on his part will result in either a multiplicity of suits or work irreparable damage or injury to the plaintiffs and all of their class.

3. As to Paragraph III, this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained.

4. As to Paragraph IV, this defendant admits the allegations thereof.

5. As to Paragraph V, this defendant is without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

6. As to Paragraph VI, this defendant denies that he has made any contention in reference to said Anti-Closed Shop Amendment or to enforcement thereof against the plaintiffs by civil and criminal proceedings and denies that it is [fol. 54] his intent and purpose to force anyone to comply with any illegal law. This defendant denies that he has made any threats as therein alleged and further denies that he has received any orders from the Attorney General of the State of Florida in reference to said so called Anti-Closed Shop Amendment. That defendant is without knowledge or information sufficient to form a belief as to the truth of the averments concerning the other parties defendant herein.

Further answering, this defendant says that as the Sheriff of Hillsborough County, Florida, it is his purpose to serve all warrants, process and other papers duly and regularly issued by the Courts of this state and to enforce the criminal laws of the State and to do and perform all duties imposed upon him by law. That as to the matters and facts alleged in the complaint the enforcement efforts of this defendant are a result of proceedings instituted by other duly authorized officials of the State of Florida. That he has no knowledge of any violations of Section 833.01, Florida Statutes of 1941, and no violation thereof has been called to his attention.

Defendant further says that the complaint filed herein fails to state a claim against defendant upon which relief prayed for can be granted and that said complaint fails to show that this defendant is either a necessary or a proper party defendant, and this defendant prays that he be dismissed as a party defendant herein.

Hugh Culbreath, As Sheriff of Hillsborough County Florida.

Lewis H. Hill, Jr., of Hill & Hill, Attorneys for named defendant.

[fol. 55] IN UNITED STATES DISTRICT COURT

PROOF OF SERVICE—Filed Feb. 24, 1945

STATE OF FLORIDA,

Leon County

Before the subscriber personally appeared D. Stuart Gillis, who being duly sworn, says that he is attorney for the defendant, Millard Caldwell, as Governor of the State of Florida, and that on February 23, 1945, he mailed in due course of United States mail, a copy of the attached Answer of the said defendant to the following named attorneys, to-wit:

Joseph A. Padway, Esq., Herbert S. Thatcher, Esq., 736 Bowen Building, Washington 5, D. C.; Edwin C. Coffee, Esq., Law Exchange Building, Jacksonville 2, Florida; J. Dress Pannell, Esq., 206 Brotherhood Building, Harris-

burg, Pennsylvania; Messrs. Pat Whitaker and Tom Whitaker, Tampa Gas Building, Tampa, Florida.

D. Stuart Gillis.

Sworn to and subscribed before me this February 23, 1945. Harriet E. Roebuck, Notary Public, State of Florida at Large. My Commission expires July 9, 1945. Bonded by American Surety Co. of N. Y. (Seal.)

[fol. 56] IN UNITED STATES DISTRICT COURT

ANSWER OF THE DEFENDANT, MILLARD CALDWELL, AS GOVERNOR OF THE STATE OF FLORIDA—Filed Feb. 24, 1945

For answer to the Complaint, the defendant, Millard Caldwell, as Governor of the State of Florida, says:

First Defense

The complaint fails to state a claim against this defendant upon which the relief prayed for can be granted.

Second Defense

This defendant denies the allegations of paragraph 49 of the complaint, to the effect that he contends, in his official capacity, jointly with the other defendants or individually, as is in said paragraph alleged.

Third Defense

This defendant denies the allegations of paragraph 50 of the complaint, directly or by implication charging that this defendant, in his official capacity, has, jointly or through the other defendants, threatened to file criminal and/or civil complaints against the plaintiff labor organizations, their employers, their officers or agents, or the individual plaintiff, as in said paragraph alleged, or that he intends or entertains any purpose to force, or attempt to force, compliance with any invalid provision of the Florida Constitution or statutes.

Fourth Defense

Further answering the complaint, this defendant says that the only means by which he, as Governor and Chief

Executive of the State of Florida, may see that the laws of the State are faithfully executed, as required by the Constitution of said State, are through the defendant prosecuting officials and other officials of the same class employing the ordinary processes of law and over whom he exercises and can lawfully exercise no control except as the power vested in him to suspend such officials, except the [fol. 57] Attorney General of the State, a constitutional officer and over whom this defendant has no control whatever, is influential. Therefore, this defendant says that he is neither a necessary or proper party to this action, and prays to be hence dismissed.

Fifth Defense

This defendant avers that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the complaint other than those to which answer is above specifically made.

Wherefore, this defendant prays that he may be hence dismissed.

D. Stuart Gillis, Attorney, Capitol, Tallahassee, Florida, Attorney for Millard Caldwell, as Governor of the State of Florida.

In United States District Court

Answer of the Defendant, J. Rex Farrior, as State Attorney, Thirteenth Judicial Circuit of the State of Florida, In and For the County of Hillsborough—Filed March 1, 1945.

For answer to the complaint filed herein the defendant, J. Rex Farrior, as State Attorney for the Thirteenth Judicial Circuit of the State of Florida, in and for Hillsborough County, Florida, says:

First Defense: The complaint fails to state a claim against this defendant upon which the relief prayed for can be granted.

Second Defense: This defendant denies, as alleged in paragraph 49 of the complaint, that he contends that plain-

tiffs, by observing the provisions of their existing collective bargaining agreement and the provisions of the existing constitution and by-laws relating to union security in re- [fol. 58] quiring membership of labor organizations as a condition of employment, violates said "Anti-Labor Amendment," and further denies that he contends that "Anti-Labor Amendment" prohibits plaintiffs from entering into, or renewing collective bargaining agreements, or containing any such provisions.

Third Defense: This defendant denies, as alleged in paragraph 50 of the complaint, directly, or by implication, that he, in his official capacity, or otherwise, has any intent or purpose to force the plaintiffs to comply with any invalid law, or to enforce compliance with such a law by the plaintiffs by civil, or criminal proceedings; and denies, that he threatens to file any criminal, or civil, complaint against the plaintiffs' labor organizations and the plaintiffs' employers, or anyone similarly situated, if they continue to observe the provisions of existing collective bargaining agreements, pending the determination by this Honorable Court, or by some other competent court, of the validity of the said constitutional amendment and until the possible conflict of authority under the amendment, to-wit, the War Labor Board's power has been adjudicated.

Fourth Defense: Further answering the Complaint this defendant says that he is the duly qualified and acting State Attorney of the Thirteenth Judicial Circuit of the State of Florida, in and for Hillsborough County; that in said county there is a Criminal Court of Record; that this defendant's jurisdiction, as such officer, of any case, civil or criminal, is limited to cases in the Circuit Court to which the State of Florida is a party; that said jurisdiction of criminal cases is limited to capital cases; that the sole jurisdiction of all criminal cases, less than capital in this Judicial Circuit lies in the Criminal Court of Record, in which the prosecuting officer is the County Solicitor; that this defendant has [fol. 59] no more jurisdiction, or authority, in said Criminal Court of Record in Hillsborough County, than any other citizen of the State of Florida. Therefore, this defendant says that he is neither a necessary or proper party to this action, and prays to be dismissed therefrom.

Fifth Defense: This defendant alleges that he does not have sufficient knowledge, or information, to accurately and

fully answer as to the truth of the allegations contained in the paragraphs of the Complaint to which no specific answer is hereinabove made.

Wherefore, This defendant prays that he may be dismissed henceforth with his costs.

J. Rex Farrior, As State Attorney for the Thirteenth Judicial Circuit of the State of Florida, in and for Hillsborough County, Florida.

IN UNITED STATES DISTRICT COURT

ANSWER OF DEFENDANT ST. JOHNS RIVER SHIPBUILDING COMPANY—Filed March 16, 1945

Comes now the Defendant, St. Johns River Shipbuilding Company, a Corporation organized and existing under the laws of the State of Florida and having an office and principal place of business in Jacksonville, Florida, and for answer to the complaint filed herein, respectfully says:

1. That, as alleged in Paragraph 29, page 17 of said complaint, it admits and says that it is true that it is engaged in the building and construction of ships in the City of Jacksonville, Florida, employing approximately ten thousand employees in such business and in said City of Jacksonville, Florida.

2. That it admits the allegations in Paragraph 31, page 19 of said complaint.

[fol. 60] 3. That it admits the allegation in Paragraph 42, page 27, of said complaint, that many of its products are shipped to Jacksonville, Florida, from states other than Florida, and that it has nothing to sell, but that the ships when completed, are delivered in the Port of Jacksonville, to the United States Government, or its Agents or Lessees, or otherwise, as directed by the Government.

4. Further answering said complaint, this defendant believes it is true that the law referred to and attacked in said complaint was passed and is upon the statute books of the State of Florida, but whether the same is valid or invalid, this defendant is not advised.

5. This defendant has no knowledge of the other matters and things alleged in the complaint, except general information.

Having fully answered the complaint, this defendant prays that it may be dismissed hence with its costs.

Walter F. Rogers, Attorney for Defendant St. Johns River Shipbuilding Company.

St. Johns River Shipbuilding Company, by Jno. Ryan, V. P.

Duly sworn to by Walter F. Rogers jurat omitted in printing.

[fol. 61] Sworn to and subscribed before me this 15th day of March, A. D. 1945.

Dixie L. Fischer, Notary Public, State of Florida at Large. My Commission expires October 15, 1948. Bonded by American Surety Co. of N. Y. (Notary Seal.)

In United States District Court

Answer of Luther W. Cobbey, County Solicitor of the Criminal Court of Record of Hillsborough County, Florida—Filed May 17, 1945

Now comes the defendant, Luther W. Cobbey, as County Solicitor of the Criminal Court of Record of Hillsborough County, Florida and for answer to the Bill of Complaint and Amendment thereto, heretofore filed in the above cause answering says:

As to the matters alleged in paragraphs one (1) to forty-three (43), inclusive, and paragraphs forty-seven (47) and forty-eight (48) of said bill of complaint, this defendant has no knowledge and therefore neither admits nor denies the same.

As to the matters alleged in paragraphs forty-four (44), forty-five (45) and forty-six (46) of said bill of complaint, this defendant admits the same to be true.

Answering paragraphs forty-nine (49) to fifty-five (55), inclusive, of said bill of complaint, this defendant states

that it is his duty and intention to enforce impartially all of the laws of the State of Florida which it is the duty of the County Solicitor of Hillsborough County Florida, to enforce.

Further answering the amendment to said bill of complaint, this defendant says that he has always been a friend [fol. 62] of organized labor and denies that he has ever threatened to prosecute the paintiffs, or any of them, as alleged in said amendment to said bill of complaint.

Wherefore, this defendant prays that he may be dismissed henceforth with his costs.

Luther W. Cobbey, Defendant.

In United States District Court

Order Convoking Three-Judge Court—March 19, 1945

It appearing to this Court that the bill of complaint filed herein seeks an interlocutory judgment, restraining the enforcement, operation or execution of that certain Constitutional Amendment of the State of Florida, passed at the 1943 session of the Florida Legislature, and adopted by a vote of the people of Florida at the General Election held on the 7th day of November, 1944, and commonly known as the Labor Amendment, by restraining the acts of J. Tom Watson, as Attorney General of the State of Florida, J. Rex Farrior, as State Attorney of Hillsborough County, Florida, Joseph E. Williams, as County Solicitor of the Criminal Court of Record of Hillsborough County, Florida, and Hugh Culbreath, as Sheriff of Hillsborough County, Florida in the enforcement of such law, upon the ground of the unconstitutionality of said law, as provided by Section 266 of the Judicial Code, it is, therefore,

Ordered, Adjudged and Decreed that this Court, before whom the above cause was filed, hereby calls to his assistance to hear and determine the application for interlocutory injunction in this cause, the Honorable Curtis L. Waller, Judge of the Circuit Court of Appeals for the Fifth Circuit, and the Honorable Dozier A. DeVane, Judge of the District Court of the United States for the State of Florida. It is further

[fol. 63] Ordered, Adjudged and Decreed that the defendants in the above cause appear and show cause, if any they have, on the 29th day of March, 1945, at 10 o'clock A. M., before said Three Judge Court on the 3rd floor of the Federal Building in the City of Tampa, Florida, why an interlocutory injunction should not issue as prayed for in said complaint.

Done and Ordered in Chambers at Tampa, Florida, this the 19th day of March, A. D. 1945.

William J. Barker, District Judge.

IN UNITED STATES DISTRICT COURT

MOTION FOR RESTRAINING ORDER—Filed March 17, 1945

Now come plaintiffs in the above cause, by their undersigned attorneys, and respectfully show unto the court that since the filing of the bill of complaint in the above cause, the defendant, J. Tom Watson, as Attorney General of the State of Florida, has filed in the Circuit Court of Bay County, Florida, a quo warranto proceeding against J. A. Jones Construction Company, a corporation, and has filed in the Circuit Court of Duval County a similar proceeding against the St. Johns River Shipbuilding Company, a corporation and also filed in the same court a similar proceeding against National Container Corporation, and filed in the same court a similar proceeding against Merrill-Stevens Dry Dock & Repair Company, a corporation, and also filed in the Circuit Court of Dade County, Florida, a similar proceeding against Miami Shipbuilding Company, a corporation, and has also filed in the Circuit Court of Hillsborough County, Florida, a similar proceeding against the Tampa Shipbuilding Company, and also filed in the [fol. 64] same court a similar proceeding against A. Santaella & Co., Inc., Salvador Rodriguez, Inc., Corrall-Wodiska & Co., J. W. Roberts & Son, Inc., Cuesta, Rey & Co., Grandiaz, Annis & Co., Inc., Morgan Cigar Company, Inc., and Jose Arange & Co., and has also applied to the Supreme Court of Florida for a writ of quo warranto against the Dade County Roofing Company, wherein he is seeking to have immediately made effective the State Constitutional Amendment here under attack, which said Amend-

ment is, in fact, illegal and void and of no effect, all of which respondents in said State court cases, with the possible exception of St. Johns River Shipbuilding Company, are co-operating with the petitioner therein, J. Tom Watson, as Attorney General as aforesaid, and there will not be any bona fide defense made in said suits, or most of them, but that said proceedings will go practically undefended, and that the suits, or most of them, in fact, have the co-operative assistance of respondents in having the prayers contained in the petitions filed by the Attorney General sustained and granted, to the effect that the Constitutional Amendment here under attack is legal and valid and the closed shop provisions of the contracts invalidated; that in each of said proceedings so instituted as hereinabove stated, there is in existence and has been for a long period of time, a legal and valid contract between the respondent named in each proceeding and its employees; that these plaintiff unions were and are the duly and legally elected bargaining agents for the employees of the respondents in a large number of said State court cases, which contracts embrace and include a closed shop provision; that each of said proceedings instituted by the Attorney General as hereinabove stated, seeks to have the court hold and determine that the provision in each of said contracts for union or closed shop to be illegal and void and in violation of the Amendment to the State Constitution, although said contracts were entered into prior to the adoption of said [fol. 65] Amendment, which is here under attack; that on the 20th day of March, 1945 the respondents in all of the State court cases are required to have filed their defense to said actions; that neither plaintiffs in this proceeding nor any union bargaining agent nor employees are made parties to said State court suits; that unless this Honorable Court grants a temporary restraining order, the said J. Tom Watson, as Attorney General, will immediately in all or some of said cases, cause to be entered an order holding the Constitutional Amendment here under attack to be legal and valid and the closed or union shop provision of said contracts invalidated.

That said contracts mentioned in said State court cases were legally and validly entered into between the respondents and their employees through their legal and duly elected bargaining agents, and affects over 40,000 such employees who are members of plaintiff unions. That all of

said employees have been and are enjoying the provisions of said contracts so voluntarily entered into, including the closed shop provision sought in said State court proceedings to be invalidated; that none of the plaintiffs or employees of said respondents in said State court cases are made parties to said proceedings instituted by the Attorney General as hereinabove stated; that the invalidation of said provisions of said contracts in said proceedings brought by the Attorney General in the State courts will cause chaos and confusion among the employees, not only those embraced in the contracts of said respondents to said cases, but thousands of other employees of other companies which have similar union contracts in the State of Florida, and who are either plaintiffs in this cause or are represented by the plaintiffs; that unless enjoined and restrained by this Honorable Court, the plaintiffs' contract and property rights sought to be preserved in this proceeding will be immediately impaired and destroyed, and as a result, utter confusion created in the ranks of plaintiffs, as well as labor generally [fol. 66] in the State of Florida; that said proceedings brought by the Attorney General in the State Courts vitally affect the property and civil rights of the plaintiffs in this cause, as well as thousands of employees represented by plaintiffs who are now under a valid, legal contract with their employers, carrying similar closed shop provisions as that embraced in the proceedings instituted by the Attorney General in the State courts; none of plaintiffs are made parties to said State Court cases and therefore cannot be heard in said State court proceedings; that the proceedings in said State court cases are restricted in scope and the court could not in those proceedings adjudicate, determine and pass upon all of the issues which is necessary in the administration of equity and which can be done in the proceedings in this court; that plaintiffs will suffer irreparable loss and damage unless this court grants temporary restraining order; that plaintiffs' rights in the existing contracts entered into prior to the adoption of said Constitutional Amendment and still in existence under the terms thereof, will be immediately cut off and destroyed, as well as similar rights under legal and valid contracts entered into between plaintiffs as the legally elected and chosen bargaining agents for employees and the defendants to this cause, voluntarily entered into by all parties (plaintiffs

and defendants) as well as other managements and their employees, both before and since the adoption of said Constitutional Amendment; that these property rights should be preserved and held in status quo until its validity has been passed upon and determined by this court, as sought in the bill of complaint in this cause.

Plaintiffs further show unto the court that in connection with the State court suit brought by the Attorney General against said National Container Corporation, the said National Container Corporation has already served notice by letter upon plaintiffs in this cause, and other interested unions represented by the plaintiffs as a class, since the institution of this suit, that it is going to disregard the closed shop provision of the existing contract, copy of said [fol. 67] letter being attached hereto, marked Exhibit "A" and made a part hereof, and plaintiffs attach hereto copy of the quo warranto information or petition filed by the Attorney General against said National Container Corporation, and pray reference thereto, and further aver that the information or petition filed in the other State court cases are practically identical with the attached petition, except the names of the parties respondent.

Plaintiffs hereby make all of the allegations of the bill of complaint filed in this cause a part of this motion the same as though the same were re-averred and set forth herein, and pray reference thereto as often as may be necessary.

Wherefore, plaintiffs pray this Honorable Court, in order to prevent irreparable loss and damage to plaintiffs herein under the emergency hereinabove alleged, to enter an order temporarily restraining the defendants, J. Tom Watson, as Attorney General of the state of Florida, J. Rex Farrior, as State Attorney in and for Hillsborough County, Florida, Hugh Culbreath, as Sheriff of Hillsborough County, Florida, and Joseph E. Williams, as County Solicitor of the Criminal Court of Record of Hillsborough County, Florida, and each of them, as well as their assistants, employees, agents and attorneys from taking any further steps or causing to be done anything in the State court proceedings hereinabove alleged or otherwise, looking toward the invalidation of the closed shop provision contained in contracts in existence in Florida, or enforcing in any way the constitutional labor Amendment adopted at the 1943 session of the Florida Legislature and approved by vote of

the people at the general election held on the 7th day of November 1944, which is involved in this proceeding and specifically set forth in the bill of complaint herein.

Joseph A. Padway, Herbert S. Thatcher, Edwin C. Coffee, J. Dress Pannell, Pat Whitaker, Tom Whitaker, by Pat Whitaker, Attorneys for Plaintiffs.

[fol. 68] *Duly sworn to by Glenn A. McClung. Jurat omitted in printing.*

Exhibit "A" To Motion

February 19, 1945.

International Brotherhood of Electrical Workers, 905 Watts Bldg., Birmingham, Ala.; International Brotherhood of Paper Makers, 521 Temple Court Bldg., Chattanooga, Tenn.; International Association of Machinists, Machinists Bldg., Washington, D. C.

Gentlemen:

Our contract with you dated October 27, 1944, contains the following clause:

> All new permanent employees shall, as a condition of employment, join their respective signatory Union Local within thirty (30) days after being employed. Any employee who has been classified as an extra board employee shall, after thirty (30) accumulated days of of work, be required, as a condition of employment, to join the proper signatory Union Local.
>
> All present eligible permanent employees of the Company shall become members of the proper signatory Union Locals within thirty (30) days from the date of the signing of this contract. All present eligible permanent employees will be accepted as members by the Union.
>
> [fol. 69] Any permanent employee who is now in good standing in the local signatory Unions or who after this date becomes or is reinstated as a member, shall, as a condition of employment, maintain such membership in these Unions during the life of this agreement, but no action shall be taken by the Company which will render the Company liable to charge of unfair labor practices.

As you know the Legislature of Florida at its twenty-ninth regular session in 1943 by House Joint Resolution No. 13, submitted the hereinafter quoted amendment of Section Twelve of the Declaration of Rights of the Constitution of Florida, to the people of Florida, which proposed amendment was adopted by the People of Florida in the general election of 1944. The said section of the Declaration of Rights as amended is as follows:

> No person shall be subject to be twice put in jeopardy for the same offense, not compelled in any original case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law, nor shall private property be taken without just compensation. The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor union to bargain collectively with their employer.

By reason of the adoption of this amendment, and its inclusion in the Constitution of Florida, it is our duty to suspend the operation of the clause in your contract above referred to and we accordingly give you notice of the suspension of this clause in your contract.

You are, of course, aware that quo warranto proceedings have been instituted against us under this amendment, copies of writs and complaints have been furnished to you, and that other suits have been brought for the purpose of establishing the validity of the above referred to constitutional amendment. This notice of suspension, therefore, will be in force until such time as a Court of Last Resort shall determine the constitutionality of this amendment.

Yours very truly, National Container Corporation,
by Samuel Kipnis, President.

[fol. 70] IN THE CIRCUIT COURT IN AND FOR DUVAL COUNTY, FOURTH JUDICIAL CIRCUIT OF FLORIDA

Case No. 16215-L

STATE OF FLORIDA, ex Rel., J. TOM WATSON, as Attorney General of said State, Relator,

vs.

NATIONAL CONTAINER CORPORATION, a Delaware Corporation, Respondent

INFORMATION IN QUO WARRANTO

Comes now J. Tom Watson, as Attorney General of the State of Florida, and the relator herein, who sues for and in behalf of the State of Florida and the people thereof, and, for said State and the people thereof, gives this Honorable Court to understand and be informed as follows:

1

The Respondent, National Container Corporation, is a corporation organized and existing under and by virtue of the general corporate laws of the State of Delaware, the same having been incorporated on or about March 2, 1937.

2

That the Respondent was organized and incorporated for the purpose of manufacturing containers, and for other and further purposes, as are mentioned in a duly authenticated copy of its articles of incorporation on file in the office of the Secretary of State of the State of Florida, at the Capitol Building, in Tallahassee, Florida.

3

That, on or about July 21, 1937, the Respondent duly obtained from the Secretary of State of Florida a permit which authorized and permitted it to transact business in the State of Florida for the objects and purposes, and with the rights, powers and privileges contained in and provided by its said articles of incorporation, when not contrary to the Laws of the State of Florida; and that the Kraft, Pulp

and Board Division of the Respondent is now engaged in carrying on a container Manufacturing business at or near [fol. 71] Jacksonville, in Duval County, Florida.

4

That the respondent, by obtaining and accepting the above mentioned permit to transact business in the State of Florida, consented and agreed with the State of Florida and the people thereof, or obligated itself, to:

(a) Use and exercise only such powers and franchises as are expressly and impliedly conferred upon it by its charter and the Constitution, statutes and laws of the State of Florida;

(b) Refrain from exercising or attempting to exercise any powers or franchises denied to it, or not conferred upon it, by the Constitution, statutes and laws of the State of Florida;

(c) Refrain from entering into contracts or agreements not within its express or implied powers and franchises, or in violation of the Constitution, statutes and laws of the State of Florida; or, that are otherwise ultra vires, or contrary to the public policy of this state;

(d) Refrain from taking any action or doing or performing anything in violation of, or contrary to, any of the laws of this state.

5

That on or about November 20, 1942, the said Respondent made and entered into an agreement with the following labor unions, which unions cover practically all, if not all, of the crafts and workers employed by the Respondent in its container manufacturing plant in or near the City of Jacksonville, Duval County, Florida, to-wit:

International Brotherhood of Electrical Workers Local Union No. B-982.

International Brotherhood of Paper Makers Local Union No. 418.

International Brotherhood of Paper Makers Local Union No. 418-A.

[fol. 72] as will more fully appear by reference to a true and correct copy of said agreement, excepting the signa-

tures of the officials who signed same in behalf of the parties thereto, which is hereto attached as Exhibit "A" and made a part hereof by reference.

6

That in and by said agreement the Respondent specifically contracted and agreed with the above mentioned labor unions and organizations as follows:

"SECTION 2. JACKSONVILLE, KRAFT, PULP AND BOARD DIVISION—RECOGNITION

* * * * * * *

All new permanent employees shall, as a condition of employment, join their respective signatory Union Local within thirty (30) days after being employed. Any employee who has been classified as an extra board employee shall, after thirty (30) accumulated days of work, be required, as a condition of employment, to join the proper signatory Union Local.

All present eligible permanent employees of the Company shall become members of the proper signatory Union Locals within Thirty (30) days from the date of the signing of this contract. All present eligible permanent employees will be accepted as members by the Union.

Any permanent employee who is now in good standing in the local signatory Unions or who after this date becomes or is reinstated as a member, shall, as a condition of employment, maintain such membership in these Unions during the life of this agreement, but no action shall be taken by the Company which will render the company liable to charges of unfair labor practices."

7

That the Legislature of Florida, at its 29th regular session, in 1943, by house joint resolution number thirteen submitted the hereinafter quoted amendment of Section 12 of the Declaration of Rights of the Constitution of Florida, to the people of Florida, which proposed amendment was adopted by the people of Florida at the general election of

1944. The said section of the Declaration of Rights, as amended, is as follows:

> [fol. 73] Section 12. No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any original case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken without just compensation. *The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization;* provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer. (Underscoring supplied.)

8

That the Respondent and its agents, officers and directors are complying with and abiding by the terms, requirements, conditions and specifications in said Agreement and contained, notwithstanding the adoption of said amendment of Section 12 of the Declaration of Rights of the Constitution of Florida, and, by so doing, are:

(a) Denying or abridging the right of the people of Florida to work, on account of membership or nonmembership in a labor union or organization, and are, thereby, violating the organic laws of this State;

(b) Illegally agreeing between themselves, to prevent qualified persons in Florida from obtaining or procuring work on account of membership or nonmembership in a labor union or organization;

(c) Illegally agreeing, between themselves, to prevent qualified persons in Florida from obtaining or procuring work in the container-manufacturing industry in Florida.

(d) Illegally agreeing to prevent qualified persons in Florida from retaining work on account of membership or nonmembership in a labor union or organization.

9

That by virtue of the adoption of said constitutional amendment, the above quoted portion of said agreement, in

so far as it relates to and provides for a union shop, has become and is illegal, without force or effect, in violation of the laws and Constitution of the State of Florida, contrary to the Respondent's said permit to transact business in the State of Florida, and outside of any warrant, [fol. 74] charter or grant to the respondent. That, nevertheless, by complying with and abiding by the above quoted terms, requirements, conditions and specifications of said agreement, the Respondent has usurped and does still usurp the franchise, privilege or liberty of performing the above quoted portion of said agreement, against the State of Florida and the people thereof to their damage and prejudice and against the peace and dignity of the said State of Florida and the people thereof.

10

That the relator avers that the power and authority of the National War Labor Board in regard to matters pertaining to production in furtherance of the war effort is distinct from the question of whether or not the contract in question violates said constitutional amendment, and relator further avers that, in bringing this suit, he seeks to obtain a determination of the legal effect of said constitutional amendment upon the above mentioned agreement, subject to the superior authority of said War Labor Board to amend such directives regarding the carrying out of said agreement as appear to it to be required in the interest of war production, even though such directives should result in suspending the operation of the Court's Order on the question of the legal effect of said amendment.

The relator avers that whatever final order is made by your Honorable Court in this cause should be made in appropriate recognition of the war powers of said War Labor Board with respect to its emergency control over industry involved in war production; and, consistent with this averment, relator will request the National War Labor Board to participate in this proceeding as Amicus Curiae or in such other capacity as to it may seem most appropriate in ample time for it to do so prior to the return day of the quo warranto writ asked for herein.

[fol. 75] That the relator would not oppose the granting of application for intervention in this cause by the labor unions named in this information, subject to the laws and rules applicable in the case of intervening parties and strictly as intervenors.

Whereon the said Attorney General of the State of Florida, for and in behalf of the said State and the people thereof, prays the advice of this Court in the premises and that due process of law issue against the said National Container Corporation in this behalf, and that the Court will declare that the said Respondent is unlawfully usurping, exercising and enjoying its said permit to transact business in the State of Florida by doing business under and with the aid of the complained of portions, hereinabove set forth in its contract aforesaid, contrary to the law, and that it be ousted from the continuation thereof, subject to any suspension of such ouster made necessary by the exercise of any power *b*ested by law in the National War Labor Board.

J. Tom Watson, as Attorney General of the State of Florida.

IN UNITED STATES DISTRICT COURT

NOTICE OF HEARING ON MOTION FOR RESTRAINING ORDER—Filed March 17, 1945

To: Hon. J. Tom Watson, Attorney General of the State of Florida, and Hon. Millard Caldwell, as Governor of the State of Florida.

You, and each of you, are hereby notified that the plaintiffs in the above styled cause will apply to the Honorable William J. Barker, Judge of the above Court, in chambers [fol. 76] on the 3rd floor of the Federal Building in the City of Tampa, Florida, on Monday the 19th day of March, 1945, at 2 o'clock P. M. for a temporary restraining order in order to preserve the rights of the plaintiffs in the above styled cause in status quo until said cause can be heard by a Three Judge Court as provided by Act of Congress.

Joseph A. Padway, Herbert S. Thatcher, Edwin C. Coffee, J. Dress Pannell, Pat Whitaker, Tom Whitaker, Pat Whitaker, Attorneys for Plaintiffs.

STATE OF FLORIDA,
County of Hillsborough:

Personally appeared before the undersigned authority, duly authorized to administer oaths, Pat Whitaker, who being first duly sworn, deposes and says:

That he served a copy of the foregoing notice filed in the above cause upon Hon. J. Tom Watson, as Attorney General of the State of Florida, and upon Hon. Millard Caldwell, as Governor of the State of Florida, on the 14th day of March, 1945 by depositing the same in the United States mail, properly addressed to them at their respective offices in the City of Tallahassee, Florida, with postage prepaid.

Pat Whitaker.

Sworn to and subscribed before me this 14th day of March, 1945. Leila McGeachy, Notary Public.

On March 17, 1945, the plaintiffs filed their Notice of Hearing for Restraining Order to Hon. J. Rex Farrior, Hon. Hugh Culbreath, and Hon. Joseph E. Williams, in the following words and figures to wit:

[fol. 77] To: Hon. J. Rex Farrior, as State Attorney in and for Hillsborough County, Florida,

Hon. Hugh Culbreath, as Sheriff of Hillsborough County, Florida, and

Hon. Joseph E. Williams, as County Solicitor of the Criminal Court of Record of Hillsborough County, Florida.

You, and each of you, are hereby notified that the plaintiffs in the above styled cause will apply to the Honorable William J. Barker, Judge of the above court, in chambers on the 3rd floor of the Federal Building in the City of Tampa, Florida, on Monday the 19th day of March, 1945, at 2 o'clock P. M., for a temporary restraining order in order to preserve the rights of the plaintiffs in the above styled cause in status quo until said cause can be heard by a Three Judge Court as provided by Act of Congress.

Joseph A. Padway, Herbert S. Thatcher, Edwin C. Coffee, J. Dress Pannell, Pat Whitaker, Tom Whitaker, Tom Whitaker, Attorneys for Plaintiffs.

STATE OF FLORIDA,
County of Hillsborough:

Personally appeared before the undersigned authority, duly authorized to administer oaths, TOM WHITAKER, who, being first duly sworn, deposes and says:

That he served a copy of the foregoing notice filed in the above cause upon Hon. J. Rex Farrior, as State Attorney in and for Hillsborough County, Florida; Hon. Hugh Culbreath, as Sheriff of Hillsborough County, Florida, and Hon. Joseph E. Williams, as County Solicitor of the Criminal Court of Record of Hillsborough County, Florida, on the 14th day of March, 1945, by depositing the same in the United States mail, properly addressed to them at their [fol. 78] respective offices in the City of Tampa, Florida, with postage prepaid.

Tom Whitaker.

Sworn to and subscribed before me this 14th day of March, 1945. Leila McGeachy, Notary Public.

IN UNITED STATES DISTRICT COURT

PROOF OF SERVICE OF COPY OF MOTION FOR RESTRAINING ORDER—Filed March 17, 1945

STATE OF FLORIDA,
County of Hillsborough:

Personally came before the undersigned authority, duly authorized to administer oaths, TOM WHITAKER, who, being first duly sworn, deposes and says: That he served a copy of the motion for restraining order in the above styled cause upon the defendant, J. Tom Watson, as Attorney General of the State of Florida, on Thursday, the 15th day of March 1945, by depositing the same in the United States mail, properly addressed to him at his office in the City of Tallahassee, Florida, with postage prepaid.

Tom Whitaker.

Sworn to and subscribed before me this 17th day of March, 1945. Leila McGeachy, Notary Public, State of Florida at Large.

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF GLENN A. McCLUNG—Filed March 19, 1945

STATE OF FLORIDA,
County of Hillsborough:

Personally came before the undersigned officer, duly au-
[fol. 79] thorized to administer oaths, GLENN A. McCLUNG, who being first duly sworn, deposes and says:

That he is Secretary of the Tampa Metal Trades Council, and that the Tampa Metal Trades Council is a member of and affiliated with the Metal Trades Department, A. F. of L., and as such, one of the plaintiffs in the above styled cause; that this deponent is the same Glenn A. McClung who made and subscribed to the affidavit to the bill of complaint in this cause, as well as to the motion for preliminary restraining order filed by the plaintiffs.

Deponent further states that there is in existence in Florida approximately 500 agreements and contracts containing the Union or closed shop provision, which affects approximately 1000,000 employees; that said agreements and contracts are with employers engaged in practicallly every line of business and industry in the State, except that of Agriculture; that the plaintiff Unions were duly elected and selected as the bargaining agents by the employees of said businesses and industries, and as such bargaining agents did voluntarily enter into legal and valid contracts with the employers, which said contracts were made and entered into prior to the adoption of said Labor Constitutional Amendment referred to in the bill of complaint and were in existence at the time of the adoption of said Amendment and still are in existence, and said contracts provide for a Union or closed shop.

Deponent further states that the vast majority of said employers, parties to said contracts, are corporations, and this deponent states that he has been informed and verily believes that the defendant, J. Tom Watson, as Attorney General of the State of Florida, has prepared and is on the
[fol. 80] verge of filing, wholesale proceedings in State courts seeking to give effect to said Constitutional Labor Amendment through quo warranto, against said corporations by asking in said State Court proceedings that the franchises of said corporations be revoked for the reason of

the continued recognition by said corporations of said Union or closed shop provisions of said contracts, and that said provisions of said contracts be held to be illegal and invalidated, and deponent further states that the said J. Tom Watson, as said Attorney General, will immediately file said wholesale proceedings in said State courts unless immediately restrained by this Honorable Court, and deponent further states that none of these plaintiffs nor said employees interested in said contracts will be made parties to said proceedings.

Deponent further states that the said J. Tom Watson, as Attorney General of Florida has threatened and is threatening to also file criminal prosecutions against employers and employees who recognize the closed shop provisions of contracts, or enter into contracts containing such provisions, as shown by the newspaper clipping hereto attached from the Tampa Daily Times under date of December 8, 1944, wherein the said J. Tom Watson is quoted as stating that it is his intention to "Take all the action the law allows me to take", and wherein he also stated all closed shop contracts now existing in Florida are illegal and that employees and employers entering into closed shop contracts are "Subject to criminal prosecution as well as civil action damages." And Deponent states that the wholesale filing of said suits and prosecutions by the said J. Tom Watson as Attorney General of the State of Florida, which will be done immediately unless this court grants preliminary restraining order, will result in irreparable injury to the plaintiffs to this cause and said employees and they will be involved in a multiplicity of suits and innumerable proceedings, while at the same [fol. 81] time, wholesale suits will be filed and proceedings instituted by him involving the rights and interests of the plaintiffs herein and all of the employees interested in said contracts, without any of them being made parties to said suits, and therefore denied the right to be heard in said proceedings. This last class of cases being the quo warranto proceedings already instituted and which he is about to institute and to which proceedings none of the plaintiffs or affected employees are or will be made parties at all.

Glenn A. McClung.

Sworn to and subscribed before me this 19th day of March, 1945. Leila McGeachy, Notary Public, State of Florida at Large. (Notary Seal).

Watson To See WLB About Closed Shops; Hits at President

By Joe Grotegut

Times Staff Writer

Jacksonville, Dec. 8.—Buoyed up by a pep meeting here at which an attempt was made to sell all Florida on its new amendment supposedly outlawing the closed shop, Attorney General Watson is going to Washington to try to find out how the War Labor Board feels about it.

At the meeting yesterday afternoon, billed as a statewide "Town Hall," Watson asserted that in his "humble opinion" closed shop contracts now existing in Florida are illegal.

He warned—"inferentially at least" according to his own description of the warning—that employes and employers entering into closed shop contracts are "subject to criminal prosecution as well as civil action damages."

Cites Old Law

He said that under an old Florida law any two persons conspiring to prevent another from procuring work or causing his discharge were guilty of a misdemeanor. He explained that under a court decision in his attempt to break Tampa Shipbuilding Company's closed shop before adoption of the amendment in November such a contract was not recognized as against the law.

Watson declared, however, that the Federal Government is responsible for allowing "the closed shop issue to become a real issue in industry" and for "the failure to meet the situation."

Hits Roosevelt

One single statement by the head of the present administration could almost set the situation right. What he said in 1941 is actually true today—the closed shop is Hitlerism. If he had lived up to that, the right-to-work amendment never would have been submitted."

Watson reported that after passage of the amendment he asked the White House for a 15-minute appointment with President Roosevelt but was advised it would not be possible because of 'extraordinary demands' on the President's time. He said it was suggested that he talk to U. S. Attor-

ney General Biddle, but added he has not been "to see that gentleman yet and I am not going to."

WLB's Policy

After the meeting, he said he would go to the War Labor Board as soon as possible "to see what its policy is and whether it realizes what the Florida situation is." In the past WLB has closed many war plants to non-union workers.

Asked what he would do in the meantime, particularly with reference to any closed shop contracts not involving war workers, Watson said he would "take all the action the law allows me to take." He declined to give details of the enforcement he said he already was attempting, asserting "there are so many ways of pursuing enforcement."

The Attorney General said he thought the meeting was "valuable to the amendment itself—to its acceptance and operation." However, it threw no light on its application, discussion of which was announced by Watson in advance as the purpose of the session.

He told the 70 some persons present that the meeting was his "effort to try to be careful before anything is done by me," but later in his opening address he admitted it was an "excuse for sending out" newspaper reports of what went on.

Watson took up a third of the two-hour session. The rest of the time was devoted to questions and to brief speeches from the floor, toward the end limited to two minutes, some simply lauding open shop unions, others picturing closed shops as a menace to the nation.

Watson refused to answer certain questions, asked by the two or three labor men present who work in closed shops. He announced at the outset he didn't "want anybody to ask me a lot of questions," asserted he did not have the "capacity" to talk off-hand of specific cases. He said, too, he did not want the Legislature next year to attempt to say "what would or would not violate the amendment."

No Fighting

Voices were raised a couple of times but the trigger-fisted Attorney General promised "there won't be any fighting."

What Watson had to say also included these statements:

The people of Florida are "entitled to a pat on the back for adopting the amendment."

He has "no sympathy or patience for closed shops in labor or anywhere else."

A union man has had a right to say, "you can't fire me because I belong to a union;" now both union and non-union men "are protected."

The amendment is now in force and employers "have got to stop taking the course of least resistance and yielding to these closed shop contracts." It makes them as well as unions liable. Anyone disregarding its provisions "is acting in violation of the law."

Cites Letter

It will stop letters such as one he read, saying it was written a year ago by Gene Murphy of McCloskey and Co., Tampa, on the instructions of M. H. McCloskey, Jr., company president, dismissing Will D. Vincent, foreman at Hooker's Point Shipyard because union officials objected to him "as non-member."

Closed shops now in existence are unconstitutional unless there is some "superior legal power that supplants that rule either temporarily because of some emergency or for some special or particular reason.

The Dual System

"We are in a war and have a dual system of government, just speaking of the State and Federal Governments. . . . Anybody who undertakes an enforcement that either one raises a question about has got to be careful."

A recent ruling by the Regional WLB upholding a maintenance of membership clause in a Florida labor contract has been "distorted . . . pictured as ignoring the amendment." The ruling simply was that the particular contract, not calling for a closed shop, does not violate the amendment.

Statements made by Joseph Padway, American Federation of Labor counsel, and Leo Hill, Florida Federation president, "that the Federal Government intends to ignore it are not tenable.

'Not a Court'

"The War Labor Board is not a court and its order isn't a judicial decree." Such an order has "never been held" as superseding a State Constitution. However, he is "not

to be the one to challenge the war powers of the President to the damage, harm or injury of the war effort in any way."

The amendment puts "police power in the Constitution and police power knows no vested right." The Attorney General is not the only law enforcement officer in the state;" literally he is not one. "The law enforcement officers are out in the counties." Test cases have originated before in county and JP courts."

Watson emphasized that he was not "trying to pass the buck but just to point out a fact."

Howell Asks Questions

Questions popped as soon as he finished his speech.

George B. Howell, Tampa Shipbuilding Co. president, asked two. His first was whether the Secretary of State could revoke the charter of a company violating the Constitution. The Attorney General said no. Howell also asked if all existing closed shop contracts are void. Watson said he thought all were illegal but not voided by mere passage of the amendment.

Howell, who said he stopped at the meeting en route to New York, declined comment afterward on his own closed shop contracts.

Watson came nearest to his usual degree of heat when Victor Rooney, Jacksonville City councilman who was representing the Order of Railroad Conductors, was attempting to say that low wages affect all business men. Watson accused him of trying to debate again the "pros and cons" of the amendment, only to hear Rooney put himself on the Attorney General's side.

Cites Rail Unions

The Railroad Brotherhoods have no closed shop contracts under Federal law, as proudly pointed out by Watson earlier.

Dan Ellis, Jacksonville, legislative representative of the Brotherhood of Locomotive Firemen and Enginemen, gave ringing support declaring, "this is a matter of law and we union men have got to abide by it." He said unions are confronted with their "most serious time" and asked what the "younger generation will think" when reading in history of wartime strikes."

Lawrence Houser, Jacksonville, member of the Commercial Telegraphers' Union, asked Watson "what the State is going to do about seeing I get my union wage rate" if his present closed shop contract is void. The Attorney General said he could not give an answer. It is up to the Legislature.

The $64 Question

J. M. Phillips, president of the Jacksonville local of International Union of Elevator Constructors, demanded to know what would happen to him if he were making $2 an hour and a non-union man offered to work for $1. Watson replied that the amendment did not ban collective bargaining under which a minimum wage contract could be secured. Later in the meeting he also said he believed "it would be possible to prepare a liberal contract giving preference to union men and not violate the amendment."

Ed Price, Gainesville contractor, took the floor to assert his belief in organized labor but to say that "no man can tell me that mere payment of a fee is going to qualify a carpenter or an electrician. He said Watson was "trying to preserve something" unions were losing.

Another contractor, who refused to give his name, got up and was told by Watson that he was trying to contend state laws requiring licensing of photographers, real estate brokers and other professional men are "in effect closed shops." Said Watson:

"Don't bother us with that."

Pleased This Time

He was pleased, however, by statements by V. C. Johnson, Dinsmore, representing the Florida Guernsey Cattle Club and the State Cattlemen's Association, and a representative of the Salesmen's Association who also insisted on remaining anonymous. The former appealed to unions to stand on their merits. The latter declared, "it's up to the boys in the mill to see that the right product comes out at the right price."

Horace Loomis, of the Miami Shipbuilding Co., said he "didn't think the union men here understand" that the amendment "doesn't contemplate throwing out any union."

Whereupon Watson denied again he was opposed to unions, just "closed shoppers."

[fol. 82] IN UNITED STATES DISTRICT COURT

RESTRAINING ORDER—Filed March 19, 1945

The above matter having come on this day for hearing upon application of plaintiffs in the above styled cause for a restraining order pending hearing by the Three Judge Court, as provided by Section 380 of the U. S. C. A., of the application of plaintiffs for interlocutory injunction, it appearing that reasonable notice of this application and hearing has been served upon J. Tom Watson, as Attorney General of the State of Florida, Millard Caldwell, as Governor of the State of Florida, as well as upon J. Rex Farrior, as State Attorney of Hillsborough County, Florida, Joseph E. Williams, as County Solicitor of the Criminal Court of Record of Hillsborough County, Florida, and Hugh Culbreath, as Sheriff of Hillsborough County, Florida, and the court having duly and fully considered the facts presented at this hearing, as well as the facts alleged and set forth in the bill of complaint, and the court being of the opinion that irreparable loss and damage will result to the plaintiffs unless a temporary restraining order is granted, it is, thereupon,

Considered, Ordered, Adjudged and Decreed that temporary restraining order is hereby granted, and the defendants, J. Tom Watson, as Attorney General of the State of Florida, J. Rex Farrior, as State Attorney of Hillsborough County, Florida, Joseph E. Williams, as County Solicitor of the Criminal Court of Record of Hillsborough County, Florida, and Hugh Culbreath, as Sheriff of Hillsborough County, Florida, and each of them, as well as their assistants, employees, agents and attorneys, are hereby re-
[fol. 83] strained from enforcing or doing any act which would, either directly or indirectly, make effective in any way the constitutional Amendment passed by the 1943 session of the Florida Legislature, and adopted by vote of the people on November 7, 1944, commonly known as the Labor Amendment, and which is set out in full in the bill of complaint in this cause, and the said J. Tom Watson, as Attorney General of the State of Florida, and his assistants, employees, agents and attorneys, are hereby restrained from taking any further steps or causing to be done anything in those certain suits heretofore filed in the State courts of Florida, wherein the said J. Tom Watson, as

Attorney General of the State of Florida, has instituted quo warranto proceedings, as follows:

In the Circuit Court of Bay County, Florida, against J. A. Jones Construction Company, a corporation; in the circuit court of Duval County, Florida, against the St. Johns River Shipbuilding Company, a corporation, and also against National Container Corporation, a corporation, and also against Merrill-Stevens Dry Dock & Repair Company, a corporation; in the Circuit Court of Dade County, Florida, against Miami Shipbuilding Company, a corporation, and in the Circuit Court of Hillsborough County, Florida, against Tampa Shipbuilding Company, and also against A. Santaella & Co., Inc., Salvador Rodriguez, Inc., Corrall-Wodiska Y Ca., J. W. Roberts & Son, Inc., Cuesta, Rey & Co., Grandiaz, Annis & Co., Inc., Morgan Cigar Company, Inc., and Jose Arango & Company. It is further

Ordered that this temporary restraining order shall remain in force only until the hearing and determination of application for interlocutory injunction before the Three Judge Court referred to hereinabove. It is further

[fols. 84-85] Ordered that this temporary restraining order shall become effective upon one of the plaintiffs entering into a bond, as principal, with two good and sufficient sureties, to be approved by the Clerk of this Court, in the sum of $1000.00 payable to J. Tom Watson, as Attorney General of the State of Florida, J. Rex Farrior, as State Attorney of Hillsborough County, Florida, Joseph E. Williams, as County Solicitor of the Criminal Court of Record of Hillsborough County, Florida, and Hugh Culbreath, as Sheriff of Hillsborough County, Florida, conditioned to save them harmless from all costs and damages which they might suffer or sustain in the event it should be determined that this restraining order was improperly granted and the same should be dissolved.

Done and Ordered in Chambers at Tampa, Florida, this the 19th day of March, A. D. 1945.

William J. Barker, District Judge.

Bond on restraining order for $1,000.00 approved and filed March 19, 1945 omitted in printing.

[fol. 86] IN UNITED STATES DISTRICT COURT

NOTICE OF HEARING OF APPLICATION FOR AN INTERLOCUTORY INJUNCTION—Filed May 1, 1945

To: Hon. Millard Caldwell, Governor of the State of Florida, Hon. J. Tom Watson, Attorney General of the State of Florida, Hon. J. Rex Farrior, State Attorney of Hillsborough County, Florida, Hon. Joseph E. Williams, [fol. 87] County Solicitor of the Criminal Court of Record of Hillsborough County, Florida, Hon. Hugh Culbreath, Sheriff of Hillsborough County, Florida, Tampa Shipbuilding Company, Inc., St. Johns River Shipbuilding Company, Weir's Dry Cleaners & Laundry, Inc., National Container Corporation, and Cigar Manufacturers' Association of Tampa, defendants in the above entitled action:

You, and each of you, are hereby given notice pursuant to the provisions of Section 266 of the Judicial Code (Sec. 380, Title 28, U. S. C. A.) that the District Judge of the United States District Court for the Southern District of Florida, Tampa Division, has set for hearing and determination, in the Federal Court room, in the Federal Building in the City of Tampa, State of Florida, on the 29th day of March, 1945 at 10 o'clock in the forenoon, the application for an interlocutory injunction in the above entitled action, to enjoin the enforcement of the Labor Amendment as contained in the Constitution of the State of Florida, by enjoining the acts of J. Tom Watson, Attorney General of the State of Florida, J. Rex Farrior, State Attorney of Hillsborough County, Florida, Joseph E. Williams, County Solicitor of the Criminal Court of Record of Hillsborough County, Florida, Hugh Culbreath, Sheriff of Hillsborough County, Florida, in the enforcement, operation or execution of said State law, on the ground that said State law violates the Constitution of the United States, as well as Acts of Congress.

There is attached hereto and hereby served upon you herewith copies of the order of the Judge of the District Court of the United States, Southern District of Florida, Tampa Division, dated March 19, 1945, granting a prelim-

inary restraining order, as well as order convoking a Three Judge Court for the hearing of application for temporary injunction as provided by Section 266 of Judicial Code.

Dated this 20th day of March, 1945.

Joseph A. Padway, Herbert S. Thatcher, Edwin C. Coffee, J. Dress Pannell, Pat Whitaker, Tom Whitaker, Pat Whitaker, Counsel for Plaintiffs.

[fol. 88] [Registered mail return receipts omitted in printing.]

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF GLENN McCLUNG—Filed May 24, 1945

STATE OF FLORIDA,
County of Hillsborough:

Personally came before the undersigned officer, duly authorized to administer oaths, Glenn McClung, who being first duly sworn, deposes and says: That he is Secretary of the Tampa Metal Trades Council, one of the plaintiffs named in the above styled cause.

Deponent further states that the defendant, J. Tom Watson is a citizen and resident of Tampa, Hillsborough County, Florida, and resides and maintains his home in the City of Tampa, Hillsborough County, Florida, at 850 South Newport Avenue, and that he is registered as a voter in the office of Supervisor of Registration for voting in County and State elections in Hillsborough County, as well as is registered as a voter in the registration books in the City of Tampa, and, in fact, in addition to maintaining his residence and domicile in Tampa, votes in both County and City elections in Tampa.

Deponent further states that the plaintiff unions here involved are voluntary associations of individuals who have joined together in a common pool of their strength to [fol. 89] further their economic interest, and that the plaintiff labor organizations and the members thereof own in the State of Florida, real estate on which there is located buildings which are the property of said organisations and devoted to the use of said organizations and are of the value of many thousands of dollars in excess of $3000.00; that some of said real estate and the buildings located

thereon are being purchased by said plaintiff organizations and the purchase price has not been paid in full; that the plaintiff organizations are wholly dependent upon the dues from the members thereof with which to complete the payment of the purchase price of said properties, as well as to defray the expense of maintenance and insurance, etc., on all of the buildings including the buildings which have been paid for in full; that if this anti-labor Amendment is made effective it will cause an immediate decline and decrease in the membership of plaintiff organizations and the dues collected from said organizations, which decrease will be far in excess of $3000.00 and will thereby render the plaintiff organizations financially unable to meet their obligations on the balance of the purchase price, or to continue to defray the expense necessary for the continued maintenance of their properties, thereby jeopardizing their ownership of, as well as their financial ability to continue to defray the necessary maintenance of their properties, which would cause them to sustain a loss greatly in excess of $3000.00. Deponent further states that if said anti-labor Amendment is made operative by court proceedings, civil or criminal, it will cause such a chaotic condition in the ranks of labor and a loss of faith in the plaintiff union organizations as will result in a decimation of their membership to such extent that the loss of dues now payable to said local plaintiff organizations as well as the national plaintiff organizations, greatly in excess of $3000.00.

[fol. 90] Deponent further states that the effective functioning of plaintiff labor organizations is dependent upon the right to enter into contracts carrying a union security provision and that it is only through and by means of such voluntary associations and contracts that the individual members can effectively contend for and enforce their economic rights and privileges; that the effectiveness of the plaintiff unions as an instrument for bringing about wider acceptance of members views on wages, hours and working conditions, and its effectiveness as an instrument for inducing employers to grant employment under these conditions is dependent upon the security of the union membership and that the effectiveness of the exercise of each individual employe-s right depends upon the willingness of other members to join and act with him; that should the constitutional amendment here under attack be enforced, either by civil or criminal proceedings, such enforcement

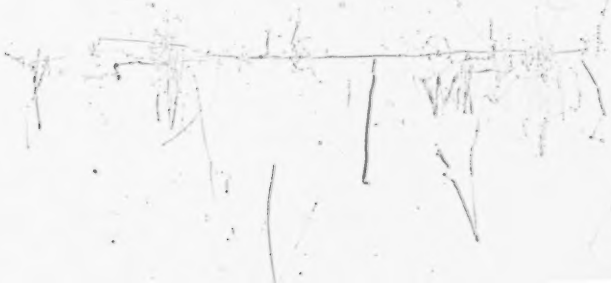
will undermine and destroy all such existing contracts, as well as future contracts of such nature; and any enforcement, as well as the threat thereof constitutes immediate, permanent, irreparable detriment, injury and damage to the continued existence of all plaintiff labor organizations within the State of Florida, which it is impossible to measure in money damages.

Deponent further states that in the constitution and by-laws of plaintiff unions, it is required that the members shall not work with any persons other than members of the same organization and many such contracts between plaintiff unions and employers exist in Florida to-day involving approximately 100,000 employees, members of said plaintiff organizations in said State; that if said anti-labor amendment is made effective, all of said members of plaintiff unions will be thrown out of employment because of this condition, to the irreparable injury to said member-employees as well as the plaintiff unions, thereby produc-
[fol. 91] ing and causing irreparable loss and damage and causing chaos and unemployment, as well as irreparable injury to the plaintiff employers and other employers similarly situated through greatly reduced production of necessary commodities; that defendant, J. Tom Watson, since the filing of this suit has instituted seven quo warranto proceedings in various state courts of Florida, seeking to make effective said anti labor Amendment, and at the time of the granting of preliminary restraining order in this cause, the said defendant, J. Tom Watson, as Attorney General of the State of Florida, had prepared and was on the verge of filing a large number of similar proceedings against other employers; deponent files herewith certified copies of said seven suits so instituted by defendant J. Tom Watson in said state courts, and makes the same part of this affidavit; that the said defendant, J. Tom Watson, has been quoted in the press of the State continually since the adoption of said anti labor Amendment as threatening labor and labor unions, as well as employees and employers with criminal and civil proceedings if they continue to recognize in any way the closed shop provisions in existing contracts, or enter into any extension or renewals, or any new contracts containing said provision, and the said J. Tom Watson was preparing to file not only a vast number of other civil proceedings at the time of the granting of

the preliminary restraining order by this court, but was also preparing to make effective his threats published in the press of the state to institute criminal proceedings by instituting a large number of criminal cases against plaintiff unions and the members thereof, as well as employers who have entered into contracts with plaintiff unions and their members, recognizing the closed shop provision of their contract. Deponent attaches hereto some of the clippings from some of the papers of this state, quoting the said defendant, J. Tom Watson, and makes the same a part of this affidavit, and these clippings are but illustra [fol. 92] tive of the said threats showing the contemplated action of the said J. Tom Watson not only as threatening to take criminal and civil action against plaintiff unions and their members, as well as employers under contract with them recognizing the closed shop provision, but that the said J. Tom Watson was actually taking steps to put into effect all of said threats at the time of the granting of the preliminary restraining order by this Honorable Court; that the filing of said multiplicity of criminal and civil suits by the said J. Tom Watson against plaintiff unions and the members thereof, and employers under contract with plaintiff unions who continue to recognize the closed shop provisions, will deprive these plaintiffs of their civil and property rights, and cause them to suffer irreparable injury impossible of money admeasurement, and the filing of said mutliplicity of suits, criminal and civil, will practically destroy and have the effect of undermining and jeopardizing the very continued existence of plaintiff labor unions, and will cause both the labor unions and the members thereof, as well as the employers to suffer irreparable injury and that the same will be done and accomplished by the said defendant, J. Tom Watson, unless enjoined by this Honorable Court.

Glenn McClung.

Sworn to and subscribed before me this 22nd day of May, 1945. Leila McGeachy, Notary Public State at Large. (Notary Seal.)



Watson Asks Enforcement of Labor Law

Attorney General Declares 'Right to Work' Bill Fundamental Act

Tallahassee, Jan. 10, (AP)—Attorney General Tom Watson today called on Florida workers and employers to recognize the anti-closed shop Amendment as part of the fundamental law "until some superior authority has assumed, or issued, a contrary order or directive."

[fol. 93] He said "both employers and employes now have a constitutional duty to say to any group that the right to work in Florida cannot be 'denied or abridged because of membership or non-membership in any union.'

"We must desist, all of us now, in taking courses of least resistance demanded by either employer, bargaining agent, business agent, or group of employes; and must refuse to subject ourselves to liability for the violation for constitutional rights, or punishment for infractions of criminal law."

The Attorney General said he felt there is sufficient authority to enforce the amendment under a 52-year-old State law which makes it a crime to "conspire, combine or confederate together for the purpose of preventing any person from procuring work" or for causing the discharge of a worker. The statute provides a fine of $500 or one year in jail for violation.

Watson said he, "with the aid of our prosecuting officers and courts," was adopting and pursuing a program in line with his interpretation that the amendment is now effective.

On December 15 he issued a statement in which he said he was "not disposed by any directive, opinion or other official act, to force an issue in the ranks of labor or employers" until legal questions involved in the dispute over the amendment was settled.

He said today's statement merely supplemented the previous one so he would "not be understood to be advocating that the amendment be disregarded."

"The sovereignty of the people in this country as citizens of the states first, and of the United States second, is uniformly recognized by all authorities in American Constitutional law," he declared.

"In the possession of such sovereign powers they are capable through constitutional enactments of passing any

law desired by them unless there is some limitation upon this field, or scope of constitutional adoption, contained in the Federal Constitution.

[fol. 94] "The right-to-work amendment to Florida's constitution is such a people's law."

WLB Orders Closed Shop to Continue

Watson Loses in Decision by Regional Office on Radio Contract

Atlanta, March 13 (AP)—The Regional War Labor Board today ruled that a closed shop contract with Miami's Radio Station WFTL shall be continued and the order "must prevail" over the anti-closed shop amendment to the Florida State Constitution.

Industry members of the board dissented.

The WLB decision followed an all-day hearing in which Florida's Attorney General Tom Watson and *and* George Googe, Southern Representative of the American Federation of Labor, exchanged verbal blasts over the controversial anti-closed shop amendment.

In the Miami case, the public and labor members said the closed shop embodied in the contract between the radio broadcasting technicians (AFL) and Ralph A. Horton, previous owner of WFTL, "shall be continued for the life of the contract between the union and the present owner."

"Insofar as the above order may conflict with the provisions of the so-called 'right to work' amendment to the Florida State constitution, the board finds that this order, having been issued pursuant to the jurisdiction of the War Labor Board under the Labor Disputes act, must prevail."

In a contract dispute case involving the United Brotherhood of Carpenters and Joiners of America (AFL) and the Tampa Box Company, Inc., Enterprise Box Company and J. W. Young and Company, the board ordered:

Voluntary maintenance of membership with the customary 15-day escape period and automatic check-off of union dues "with the priviso that in event a strike occurs during the contract period the company may petition the WLB for revocation of union security."

In that event, the board said, both the companies and union would be given a hearing.

In the Tampa cases, the board also ruled that its order [fol. 95] "must prevail" over provisions of Florida's anti-closed shop amendment.

The board explained that it ordered continuation of the closed shop under the "policy that it will not disturb the degree of union security enjoyed under previous contracts."

The hearing was marked by exchanges between Watson, ardent foe of the closed shop in any form, and Googe.

Googe registered strenuous objection to the board's action in inviting Watson to intercede in behalf of Florida's closed shop amendment, asserting that "We want to go on record asking that we be relieved from irritation in any future cases before the regional board."

The Attorney General retorted hotly that "I am not coming here and horning in; I was invited here. I shall continue to fight to uphold Florida's anti-closed shop amendment with all of my vigor, Mr. Googe and his cohorts notwithstanding."

Asserting that much erroneous information had been dessiminated prior to the election in which Florida adopted the amendment, Googe said the regional WLB should disregard it.

"The National WLB has held that its regional boards are not subject to state and local laws in their decisions," Googe said. "If this board is going to recognize the police power of states in labor cases, it must recognize city ordinances. If the National Board sanctioned this procedure, industrial chaos would surely develop.

"The board can no more recognize this so-called constitutional amendment in labor cases than it can municipal ordinances."

Contending that the amendment contained no discrimination against any group, Watson said that he "hated" the closed shop, adding that "if we in this country are going to cover up our fundamental principles because of political pressure, we are going to imperil the four freedoms."

Martin Caraballo of Tampa, former president of the Florida Bar Association, and his fellow-townsman, Ray Brown, represented the box companies. Both said the union had failed to prove responsibility and that the maintenance of membership provision should not be adopted.

[fol. 96] Tampa Morning Tribune, Friday, December 8, 1944

Watson Will Take Closed Shops to WLB

Jacksonville, Dec. 7.—(AP)—State Attorney General Watson revealed today he would go to Washington for a discussion with the National War Labor board on the existing "conflict" between WLB rule of war industries and Florida's recently voted constitutional amendment banning closed shops.

Speaking before a "town hall" meeting here which was attended by labor members and observers, Watson said in his opinion, existing closed shop contracts between labor unions and management were illegal under the mandate.

He added, however, he would be cautious in approaching anything which might impair the nation's war effort.

In his invitation to delegates to the conference, Watson declared "the matter is important because of possible conflicts under the amendment with federal authority during wartime over labor relations and conditions in WLB plants."

While hinting the solution to the problem might rest with the courts, the attorney general said enforcement of the amendment would rest with county officials under present criminal and civil statutes. He stated he did not want the Florida legislature "to attempt to say what would or would not violate" the mandate.

Watson explained he was not going to the nation's capital "to challenge the war powers of the President," but only to see what members of the WLB feel is their "responsibility" toward the Florida law.

"I will take all action the law allows me to take," he added.

The big question, said Watson, is whether a constitutional law "can be superseded by the President's war powers"—"by the WLB and other government agencies—in closing many war shops to non-union members."

He hailed Florida and Arkansas for passing non-closed shop amendments and said such action was taken in each state with "no intention of seeking an application hurtful to the war effort."

"The 'town hall' was called to set in motion the program for the application and operation of this amendment as a generally recognized part of our state organic law," Watson declared.

The attorney general said the Florida mandate flouted "none of the justifiable rights or welfare of labor—organized or unorganized—because while prohibiting the closed shop, the amendment also recognizes and preserves constitutionally collective bargaining by and through organized labor."

This view was seconded by Dan Ellis, of Jacksonville, representing the railroad brotherhood of locomotive firemen and engineers. Ellis said the railroad brotherhoods had banned closed shops within their organizations for many years, yet had not suffered a disadvantage in collective bargaining.

Tampa Morning Tribune, Thursday, January 11, 1945

Cigar Factory Owners Agree to Wage Plan

Tampa cigar factories employing eight or less workers will probably be brought under the same War Labor board wage stabilization scales of wages as control the large operators after small and large operators agreed to the plan at a hearing here yesterday.

Sixteen large Tampa cigar factories, represented by the Tampa Cigar Manufacturers association, have contended that the small plants, who were not under WLB wage controls, were taking so many of their workers, whose wages were frozen, that they were almost forced to close up and production had been hit sharply.

Petitioning the WLB for a hearing, Ralph L. Wiggins, WLB regional attorney of Atlanta, called a hearing before small and large operators in the federal building yesterday to develop information for a recommendation to Washington.

Plan Favored

The necessity for the meeting was practically eliminated at the beginning of the session when Raymond Sheldon, attorney for the Tampa Independent Cigar Manufacturers association, which represents 174 small plants, said the organization had notified the WLB Jan. 6 that they favored identical wage controls being placed over the entire Tampa industry.

At the same time, Sheldon notified the WLB attorney that the majority of the members in the organization be-

represented employed eight or more employes, and as such, were automatically under the same WLB order that controls the 16 large plants.

Five plant owners who have less than eight employes said they had no objection to the same control being placed over their operations.

Wiggins said he would recommend elimination of a present exemption in the WLB cigar order which eliminates employers of eight or less from its provisions. As a further step, a provision would be included to the effect that future vacancies in plants employing less than eight cannot be filled at the present wage rate but at a new rate approved by the WLB.

Drop Explained

A. L. Cuesta, jr. and L. A. Grayson, representing the large plants, said their 16 factories employed 5000 workers in January, 1944, dropping to 3289 on Jan. 4, 1945, and charged that the majority had found employ-

* * * * * * *

[fol. 97] Tampa Morning Tribune, Tampa, Florida, Saturday, December 16, 1944

Watson Asks 7 Lawyers to Fight Unions

Also Urges Public to Contribute Dollars

Tallahassee, Dec. 15.—(AP)—Attorney General Watson said today he is "not disposed by any directive, opinion or other official act, to force an issue in the ranks of labor or employers" on the new anti-closed shop amendment until legal questions involved are settled.

At the same time, he publicly asked Florida lawyers—specifically naming seven of them—to "volunteer their services for future handling of the issues involved" and he requested public donations not to exceed a dollar per person to pay the attorneys' fees.

Invites Seven Lawyers

The attorney general asked these lawyers, who he said have not been notified, to volunteer their services: William Fisher of Pensacola; Ray C. Brown and William C. Pierce

of Tampa; William J. Pruitt and William G. Ward of Miami; A. Y. Milam and John W. Donahoo of Jacksonville.

He also invited "any other labor relations attorneys in the state who are sufficiently interested to offer their services" for counsel in test cases.

"In calling for such legal assistance," he declared, "I by no means intend that public officials shall be interfered with in carrying on any proceedings that may be necessary to effectuate the amendment, but it is my hope that all questions can be settled in test cases submitted through orderly proceedings in competent and appropriate forms."

He made his statement after returning from a Washington conference with federal labor relations agencies on the effect of the amendment, which prohibits denying a person a job because of membership or non-membership in a labor union.

Wants Early Decisions

"It is desirable from both the national and state standpoint that early decisions be secured from the courts and other appropriate tribunals on whatever questions organized labor raises regarding the legality, constitutionality, operation and effect" of the amendment, he said.

"I find officials in Washington administering labor powers just as anxious as myself to have the questions determined."

He reiterated his belief that the amendment "is legal in every way and is effective now" but said that "inasmuch as I realize that a bona fide and sincere opinion exists in the minds of citizens in and out of *or*-organized labor regarding the operation and legal status" of the law, he will not take any immediate action to force the issue.

"I believe this whole matter so involves the public interest, welfare and industry of the state—as to warrant my asking for legal as-istance from the bar of the state in any court proceedings attacking the constitutionality of the amendment—as well as financial assistance from the people of the state through individual subscription and donation for the payment of legal fees incurrable through such legal assistance.

He said George E. Lewis, president of the Lewis State bank of Tallahassee, had agreed to act as trustee for the public fund he suggested and to receive the contributions and disburse the money "solely to pay" the lawyers' fees.

Watson Invite Is Surprise to Tampa Lawyer

Ray C. Brown, Tampa attorney, said yesterday the news that Attorney General Watson had invited him to volunteer his services as a lawyer to obtain a court decision on Florida's new anti-closed-shop amendment came as a surprise.

"That's news to me," he replied to a Tribune query. "I have no comment."

William C. Pierce, the other Tampa attorney "invited" by Watson, could not be reached. His office said he was in Tallahassee.

[fol. 98] WLB Rules Over Watson on Closed Shop

Orders Florida Contracts Be Continued

Atlanta, March 13—(AP)—The regional War Labor board today ruled that a closed shop contract with Miami's radio station, WFTL, shall be continued and the order must prevail over the anti-closed shop amendment to the Florida state constitution.

Industry members of the board dissented.

The WLB decision followed an all-day hearing in which Florida's Attorney-General Watson and George Googe, southern representative of the American Federation of Labor, exchanged verbal blasts over the controversial anti-closed shop amendment.

In the Miami case, the public and labor members said the closed shop embodied in the contract between the AFL radio broadcasting technicians and Ralph A. Horton, previous owner of WFTL, "shall be continued for the life of the contract between the union and the present owner."

"Insofar as the above order may conflict with the provisions of the so-called 'right to work' amendment to the Florida state constitution, the board finds that this order, having been issued pursuant to the jurisdiction of the War Labor board under the labor disputes act, must prevail."

Tampa Case

In a contract dispute case involving the AFL United Brotherhood of Carpenters and Joiners of America and the Tampa Box Co., Inc., Enterprise Box Co., and J. W. Young & Co., the board ordered:

Voluntary maintenance of membership with the customary 15-day escape period and automatic check off of union dues "with the proviso that in event a strike occurs during the contract period the company may petition the WLB for revocation of union security."

In that event, the board said, both the companies and union would be given a hearing.

In the Tampa cases, the board also ruled that its order must prevail over provisions of Florida's anti-closed shop amendment.

The board explained that it ordered continuation of the closed shop under the "policy that it will not disturb the degree of union security enjoyed under previous contracts."

Watson told the board the amendment, adopted by Florida voters last November, prevented renewal of a closed shop contract between an AFL union and a Miami radio station. He expanded his remarks to a general defense of the constitutional ban.

Googe, in rebuttal, attacked the amendment and asserted that Georgia's Gov. Arnall had authorized him to reveal that if the Georgia legislature, recently adjourned, had referred such a measure to the voters of the state, he (Arnall) would not have permitted it to be placed on the ballot.

WLB members, who invited Watson and Googe to discuss the Miami case and another dispute involving three Tampa concerns and another AFL union, listened to them speak for nearly four hours, then stopped the debate.

"What's being said here about the history of a proposed closed shop amendment in Georgia and the politics involved, has no more relevance to the cases we're here to decide than this," said board member Preseton Arkwright, pointing to a glass of water on the table near him.

Testimony was completed late today and the board went into executive session, announcing a decision would be handed down tonight. The hearing was held in the Piedmont hotel convention hall.

The Cases

1. Radio broadcasting technicians (AFL) seek a WLB order for renewal of a closed shop contract with Miami's radio station WFTL, the original contract having been signed with former owners. Eight employes are involved.

2. United Brotherhood of Carpenters and Joiners of America (AFL) is in a contract dispute with the Tampa Box Co., Inc., Enterprise Box Co., and J. W. Young and Co. About 600 workers are affected.

In the latter case, the union seeks a closed shop. A WLB panel has recommended that the board grant a voluntary maintenance of membership provision with 15-day escape period, conditioned on assumption by the international union of responsibility for the local union's activities for one year.

The management of the companies opposes both the closed shop and the panel recommendation, contending that a strike at all three plants last December showed "lack of responsibility" on the part of unions.

The hearing was marked by exchanges between Watson, ardent foe of the closed shop in any form, and Googe.

Googe registered strenuous objection to the board's action in inviting Watson to intercede in behalf of Florida's closed shop amendment, asserting that "we want to go on record asking that we be relieved from irritation in any future cases before the regional board."

Watson Retorts

The attorney general retorted hotly that "I am not coming here and horning in; I was invited here. I shall continue to fight to uphold Florida's anti-closed shop amendment with all of my vigor, Mr. Googe and his cohorts notwithstanding."

Asserting that much erroneous information had been dessiminated prior to the election in which Florida adopted the amendment, Googe said the regional WLB should disregard it.

"The national WLB has held that its regional boards are not subject to state and local laws in their decisions," Googe said. "If this board is going to recognize the police power of states in labor cases, it must recognize city ordinances. If the national board sanctioned this procedure, industrial chaos would surely develop.

"The board can no more recognize this so-called constitutional amendment in labor cases than it can municipal ordinances."

Contending that the amendment contained no discrimination against any group, Watson said that he "hated" the

closed shop, adding that "if we in this country are going to cover up our fundamental principles because of political pressure, we are going to imperil the four freedoms."

Martin Caraballo, of Tampa, former president of the Florida Bar association, and his fellow-townsman, Ray Brown, represented the box companies. Both said the union had failed to prove responsibility and that the maintenance of membership provision should not be adopted.

[fol. 99] Watson Will Carry Union Case To WLB

Atlanta, March 10—(AP)—Florida's Attorney General Watson will carry personally before the regional War Labor board at a public hearing here Tuesday his fight against the closed union shop.

WLB officials announced today that in anticipation of a large attendance at Watson's first appearance before the board on the controversial issue arrangements had been made to hold the hearing in the convention hall of the Piedmont hotel at 10 a. m.

The hearing will be on two Florida disputes cases. In one, Radio Broadcast Technicians (AFL) is asking the board to order continuation of a closed shop contract with Miami's radio station WFTL. The contract was signed with former owners of the station. In the other, a WLB panel has recommended that a maintenance of membership with 15-day escape clause be written into a Tampa labor contract if the international officials of the Brotherhood of Carpenters and Joiners (AFL) accepts the escape clause.

WLB said Watson took the position that an anti-closed shop amendment adopted by Florida voters last November banned continuation of such a contract as that involved in the Miami case and that in the Tampa case he contended that a maintenance of membership contract with the escape clause should not be made contingent upon its acceptance by either side.

The Tampa case involved the Tampa Box Co., Inc.; Enterprise Box Co., and J. W. Young and Co.

NLRB Examiners Finish Hearing In Guards Case

National Labor Relations board examiners completed a two-day hearing in Tampa on the status for unionization of Tampa Shipbuilding company guards and said yesterday

the testimony taken would be studied by the board in Washington.

Charles Schneider, trial examiner, and Paul Kuelthau, NLRB attorney, said a decision as to whether the guards are employed by Sheriff Culbreath or the shipyard is not likely to be announced for several weeks. Meanwhile, they said, further oral arguments in the case may be heard at Washington.

LeRoy Allen attorney for the shipyard, said the company's position that the guards are employed by the sheriff would be maintained in a brief to be forwarded to NLRB.

If determined to be employes of the sheriff, the guards will not be subject to unionization.

[fol. 100] Watson Says Unions Try To Scare Industry

Tallahassee, Nov. 13.—(AP)—Attorney General Tom Watson today said an American Federation of Labor official's plea for union members to stay in Florida despite adoption of the anti-closed shop amendment was an attempt to "frighten and intimidate Florida's business interests and developers."

He estimated that only 40 percent of organized labor's claimed membership in Florida voted against the amendment, which says a person shall not be denied a job because of membership or non-membership in a union.

Watson referred to a statement made in Atlanta Saturday by George L. Googe, southern director of the AFL, that "lots of boys feel that they want to get out of states where labor isn't appreciated, and I am begging them to stay where they are, in the interest of the war effort."

Googe "Imported"

The attorney general said "Googe came to Florida as an imported political worker for the express purpose of misrepresenting and distorting and did a good job of attempted deception * * * but he failed, as his deceptive efforts did not work with a majority of the voters.

"Now, this Googe, with some inexplicable hope, is trying to overawe us in this state, both within and without the ranks of unions by attempting to dominate the after effects of the amendment's adoption.

"If he will count the number of votes cast for and against the amendment, he will see that less than 40 percent of the claimed membership of organized labor in this state voted against it, which leaves more than 60 percent of this membership that either voted for the amendment or did not vote at all."

[fol. 101] Tampa Morning Tribune, March 21, 1945.

Shipyard Hits Florida's Law on Closed Shop

Panama City, March 20. (AP)—Wainwright yard here will have to suspend the building of ships and go out of business in Florida if it is forced to break closed shop contracts with the unions, the J. A. Jones Construction Company of Charlotte, N. C. operators, declared today.

The statement was contained in the reply to proceedings by the State of Florida to enforce the "right to work" law.

The reply was filed in Bay County, Circuit Court, after J. Tom Watson, Florida's Attorney General and author of the legislation, had initiated quo warranto proceedings. In these he charged that the Company was operating in violation of the new law.

The joining of issues brings to a sharp focus constitutionality of Florida's fifth amendment, which declares that a man should have the right to work, whether he belongs to a labor union or not, and prohibits any employers from making union or non-union affiliation a condition of employment.

In this specific case, it calls upon the J. A. Jones Construction Company to cancel contracts made with the various crafts of the Metal Trades Council of the American Federation of Labor. The existence of these contracts, it was claimed by Attorney General Watson, is a violation of the State permit, or license, under which the company is doing business.

This is the first case — a non-resident corporation's right to do business in the State. In it the Attorney General invited the National War Board to participate in the proceedings as a friend of the Court, or in any other capacity it sees fit. He also said that no objection would be raised to the labor unions taking part.

Walter G. Cornett, counsel for the shipyard, in his answer asked the court to dismiss the proceedings on the ground

that the contract between the company and the unions was made prior to the passage *to* the Florida Amendment to its constitution.

Cornett contended that cancellation of the contracts would make it impossible for the company to obtain the required number of skilled workers to carry out the company's contract with the United States Maritime Commission.

At the present, the Company is employing more than 10,000 skilled workers in a plant which represents an investment of $15,000,000.

[fols. 102-108] IN UNITED STATES DISTRICT COURT

On the 24th day of May 1945, Informations in Quo Warranto proceedings in State Court suits were filed and admitted in evidence by the Three-Judge Court, in the following words and figures to-wit:

OF THE FOURTH JUDICIAL CIRCUIT IN THE CIRCUIT COURT IN AND FOR DUVAL COUNTY, FLORIDA. 16215-L

STATE OF FLORIDA, ex rel., J. Tom Watson, as Attorney General of said State, Relator,

vs.

NATIONAL CONTAINER CORPORATION, a Delaware Corporation, Respondent

INFORMATION IN QUO WARRANTO—Filed February 15, 1945. Omitted. Printed side page 70 ante

[fol. 109] On the 24th day of May 1945, Information in Quo Warranto was filed in evidence in the following words and figures to-wit:

IN THE CIRCUIT COURT IN AND FOR DUVAL COUNTY, FOURTH JUDICIAL CIRCUIT OF FLORIDA. 16217-L

STATE OF FLORIDA, ex rel., J. Tom Watson, as Attorney General of said State, Relator,

vs.

ST. JOHNS RIVER SHIPBUILDING COMPANY, a Florida Corporation, Respondent

INFORMATION IN QUO WARRANTO—Filed February 15, 1945

Comes now J. Tom Watson, as Attorney General of the State of Florida, and the relator herein, who sues for and in behalf of the State of Florida and the people thereof, and, for said State and the people thereof, gives this Honorable Court to understand and be informed as follows:

[fol. 110]

1

The Respondent, St. Johns River Shipbuilding Company, is a corporation organized and existing under and by virtue of the general corporate laws of this State, the same having been incorporated on or about March 9, 1942. Said corporation is now engaged in operating and maintaining a shipbuilding plant in or near the City of Jacksonville, Duval County, Florida.

2

That the Respondent was organized and incorporated for the purpose of carrying on a shipbuilding business, and for other and further purposes, as are mentioned in its articles of incorporation on file in the office of Secretary of State of the State of Florida, at the Capitol Building, in Tallahassee, Florida, and is now engaged in carrying on such shipbuilding business at or near the City of Jacksonville, in Duval County, Florida.

3

That the Respondent in and by its acceptance of the articles of incorporation aforesaid and by its qualifications

as a Florida corporation with the Secretary of State of the State of Florida, consented and agreed with the State of Florida and the people thereof, or obligated itself, to:

(a) Use and exercise only such powers and franchises as are expressly and impliedly conferred upon it by its charter and the Constitution, statutes and laws of the State of Florida;

(b) Refrain from exercising or attempting to exercise any powers or franchises denied to it, or not conferred upon it, by the Constitution, statutes and laws of the State of Florida;

(c) Refrain from entering into contracts or agreements not within its express or implied powers and franchises, or in violation of the Constitution, statutes and laws of the [fol. 111] State of Florida; or, that are otherwise ultra vires, or contrary to the public policy of this state;

(d) Refrain from taking any action or doing or performing anything in violation of, or contrary to, any of the laws of this state.

4

That on or about September 1st, 1942, the said Respondent made and entered into an agreement with the following labor unions, which unions cover practically all, if not all, of the crafts and workers employed by the Respondent in its shipbuilding plant in or near the City of Jacksonville, Duval County, Florida, to-wit:

International Association of Machinists Local Union #731, International Brotherhood of Electrical Workers Local Union #177, International Brotherhood of Boilermakers, Iron Shipbuilders (Welders) and Helpers of America Local Union #199, International Association of Bridge, Structural and Ornamental Iron Workers Local Union #597, International Union of Operating Engineers Local Union #673, International Association of Sheet Metal Workers Local Union #435, United Association of Journeymen Plumbers and Steamfitters of United States and Canada Local #234, United Brotherhood of Carpenters and Joiners of America—Carpenters District Council of Jacksonville & Vicinity, International Brotherhood of Painters and Decorators Local Union #164, International Hod Carriers, Building and Common Laborers Local Union #647,

International Brotherhood of Blacksmiths, Drop Forgers and Helpers Local Union #96, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America Local Union #613.

[fol. 112] in affiliation with the Jacksonville Metal Trades Council of the Metal Trades Department of the American Federation of Labor, and other similar trade unions that may later be found to have proper jurisdiction, as will more fully appear by reference to a true and correct copy of said agreement hereto attached as Exhibit "A" and made a part hereof by reference.

5

That in and by said agreement the Respondent specifically contracted and agreed with the above mentioned labor unions and organizations as follows:

"Article 9

"Section 1.

When new employees are required, the Business Representative of the Craft concerned must send qualified persons to the plant.

The Unions agree to take into their membership such qualified men as are nominated by the Employer and agreed to by the Unions.

"Section 2.

Employer agrees to employ and retain in its employ only members in good standing in their respective unions, which are or may become parties to this agreement. Should the Unions be unable to furnish the necessary employees, within forty-eight (48) hours after written notice has been served, the Employer may employ such workers as are available and retain such available workers in its employ until the respective Union is able to furnish the necessary qualified workers, unless the available workers as employed by the Employer become members of the respective Unions.

Pending the signing of a supplemental agreement covering Trainees, the Unions agree to take into their respective Unions all Trainees who have successfully passed the requirements of the Training Schools already established or to be established by the Employer, this clause to be inoperative after November 1, 1942."

6

That the legislature of Florida, at its 29th regular session, in 1943, by house joint resolution number thirteen submitted, the hereinafter quoted amendment of Section 12 of the Declaration of Rights of the Constitution of Florida, to the people of Florida, which proposed amendment was adopted by the people of Florida at the general election of 1944. The said section of the Declaration of Rights, as amended, is as follows:

> [fol. 113] Section 12. No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any original case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken without just compensation. *The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union, or labor organization;* provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer. (Italics supplied.)

7

That the Respondent and its agents, officers and directors are complying with and abiding by the terms, requirements, conditions and specifications in said agreement contained, notwithstanding the adoption of said amendment of Section 12 of the Declaration of Rights of the Constitution of Florida, and, by so doing, are:

(a) Denying or abridging the right of the people of Florida to work, on account of membership or nonmembership in a labor union or organization, and are, thereby, violating the organic laws of this state;

(b) Illegally agreeing between themselves, to prevent qualified persons in Florida from obtaining or procuring work on account of membership or nonmembership in a labor union or organization;

(c) Illegally agreeing, between themselves, to prevent qualified persons in Florida from obtaining or procuring work in the shipbuilding industry in Florida.

8

That, by virtue of the adoption of said constitutional amendment the above quoted portion of said agreement, in so far as it relates to and provides for a closed shop, has become and is illegal, without force or effect, in violation of the laws and Constitution of the State of Florida, and outside of any warrant, charter or grant to the Respondent. [fol. 114] That, nevertheless, by complying with and abiding by the above quoted terms, requirements, conditions and specifications of said agreement, the Respondent has usurped and does still usurp the franchise, privilege or liberty of performing the above quoted portion of said agreement, against the State of Florida and the people thereof to their damage and prejudice and against the peace and dignity of the said State of Florida and the people thereof.

9

That the relator avers that the power and authority of the National War Labor Board in regard to matters pertaining to production in furtherance of the war effort is distinct from the question of whether or not the contract in question violates said constitutional amendment, and relator further avers that, in bringing this suit, he seeks to obtain a determination of the legal effect of said constitutional amendment upon the above mentioned agreement, subject to the superior authority of said War Labor Board to make such directives regarding the carrying out of said agreement as appear to it to be required in the interest of war production; even though such directives should result in suspending the operation of the Court's order on the question of the legal effect of said amendment.

The relator avers that whatever final order is made by your Honorable Court in this cause should be made in appropriate recognition of the War powers of said War Labor Board with respect to its emergency control over industry involved in war production; and, consistent with this averment, relator will request the National War Labor Board to participate in this proceeding as Amicus Curiae or in such other capacity as to it may seem most appropriate in ample time for it to do so prior to the return day of quo warranto writ asked for herein.

That the relator would not oppose the granting of application for intervention in this cause by the labor unions named in this information, subject to the laws and rules applicable in the case of intervening parties and strictly as intervenors.

[fol. 115] Whereon the said Attorney General of the State of Florida, for and in behalf of the said State and the people thereof, prays the advice of this Court in the premises and that due process of law issue against the said St. Johns River Shipbuilding Company in this behalf, and that the Court will declare that the said Respondent is unlawfully usurping, exercising and enjoying its corporate franchises, privileges and rights by doing business under and with the aid of the complained of portions, hereinabove set forth, in its contract aforesaid, contrary to the law, and that it be ousted from the continuation thereof, subject to any suspension of such ouster by the exercise of any power vested by law in the National War Labor Board.

J. Tom Watson, as Attorney General of the State of Florida.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 116] On the 24th day of May 1945, Information in Quo Warranto was filed in evidence in the following words and figures to-wit:

IN THE CIRCUIT COURT IN AND FOR DUVAL COUNTY, FOURTH JUDICIAL CIRCUIT OF FLORIDA. 16216-L

[fol. 117] STATE OF FLORIDA, ex rel., J. TOM WATSON, as Attorney General of said State; Relator,

vs.

MERRILL-STEVENS DRY DOCK AND REPAIR COMPANY, a Delaware Corporation, Respondent

INFORMATION IN QUO WARRANTO—Filed February 15, 1945

Comes now J. Tom Watson, as Attorney General of the State of Florida, and the relator herein, who sues for and in behalf of the State of Florida and the people thereof, and

for said State and the people thereof, gives this Honorable Court to understand and be informed as follows:

1

The Respondent, Merrill-Stevens Dry Dock and Repair Company, is a corporation organized and existing under and by virtue of the general corporate laws of the State of Delaware, the same having been incorporated on or about December 22, 1921.

2

That the Respondent was organized and incorporated for the purpose of carrying on a dry dock and repair business, and for other and further purposes, as are mentioned in a duly authenticated copy of its articles of incorporation on file in the office of the Secretary of State of the State of Florida, at the Capitol Building, in Tallahassee, Florida, and is now engaged in business at or near the City of Jacksonville, in the County of Duval, State of Florida.

3

That, on or about December 28, 1921, the Respondent duly obtained from the Secretary of State of Florida a permit which authorized and permitted it to transact business in the State of Florida for the objects and purposes, and with the rights, powers and privileges contained in and provided by its said articles of incorporation, when not contrary to the laws of the State of Florida; and that the Respondent is now [fol. 118] engaged in carrying on its business at or near Jacksonville, in Duval County, Florida.

4

That the Respondent in and by obtaining and accepting the above mentioned permit to transact business in the State of Florida, consented and agreed with the State of Florida and the people thereof, or obligated itself, to:

(a) Use and exercise only such powers and franchises as are expressly and impliedly conferred upon it by its charter and the Constitution, statutes and laws of the State of Florida;

(b) Refrain from exercising or attempting to exercise any powers or franchises denied to it, or not conferred upon

it, by the Constitution, statutes and laws of the State of Florida;

(c) Refrain from entering into contracts or agreements not within its express or implied powers and franchises, or in violation of the Constitution, statutes and laws of the State of Florida; or, that are otherwise ultra vires, or contrary to the public policy of this state;

(d) Refrain from taking any action or doing or performing anything in violation of, or contrary to, any of the laws of this state.

5

That on or about July 22, 1944, the said Respondent made and entered into an agreement with the following labor unions, which unions cover practically all, if not all, of the crafts and workers employed by the Respondent, in its plant in or near the City of Jacksonville, Duval County, Florida, to-wit:

Industrial Union of Marine and Shipbuilding Workers of America, CIO, Local No. 32 of the Industrial Union of Marine and Shipbuilding Workers of America, CIO,

[fol. 119] as will more fully appear by reference to a true and correct copy of said agreement hereto attached as Exhibit "A" and made a part hereof by reference.

6

That in and by said agreement the Respondent specifically contracted and agreed with the above mentioned labor unions and organizations as follows:

"Article II

Union Security

"Section 1. (a) all employees who are members of the union in good standing in accordance with it's constitution and by-laws fifteen days after the date of this contract and all employees who become members after that date, shall as a condition of employment, maintain their membership in the Union in good standing for the duration of this agreement, or until further order of the National War Labor Board."

7

That the legislature of Florida, at its 29th regular session, in 1943, by house joint resolution number thirteen, submitted the hereinafter quoted amendment of Section 12 of the Declaration of Rights of the Constitution of Florida to the people of Florida, which proposed amendment was adopted by the people of Florida at the general election of 1944. The said section of the Declaration of Rights, as amended, is as follows:

> Section 12. "No persons shall be subject to be twice in jeopardy for the same offense, nor compelled in any original case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken without just compensation. *The right of persons to work shall not be denied or abridged on account of MEMBERSHIP OR NONMEMBERSHIP IN ANY LABOR UNION OR labor organization;* provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer. (Italics supplied.)

8

That the Respondent and its agents, officers and directors are complying with and abiding by the terms, requirements, conditions and specifications in said agreement mentioned and contained, notwithstanding the adoption of said amendment of Section 12 of the Declaration of Rights of the [fol. 120] Constitution of Florida, and, by so doing, are:

(a) Denying or abridging the right of the people of Florida to work, on account of membership or nonmembership in a labor union or organization, and are, thereby, violating the organic laws of this state;

(b) Illegally agreeing to require their employees who were members of said unions in good standing fifteen days after the date of said agreement, as a condition of their employment, to maintain their membership in said unions in good standing for the duration of said agreement or until further order of the National War Labor Board.

(c) Illegally agreeing to require their employees who become members of said unions after the fifteen days next

following the date of said agreement, as a condition of their employment, to maintain their membership in said unions in good standing for the duration of said agreement or until the further order of the National War Labor Board.

9

That, by virtue of the adoption of said constitutional amendment the above quoted portion of said agreement has become and is illegal, without force or effect, in violation of the laws and Constitution of the State of Florida, contrary to the Respondent's said permit to transact business in the State of Florida, and outside of any warrant, charter or grant to the Respondent. That, nevertheless, by complying with and abiding by the above quoted terms, requirements, conditions and specifications of said agreement, the Respondent has usurped and does still usurp the franchise, privilege or liberty of performing the above quoted portion of said agreement, against the State of Florida and the people thereof to their damage and prejudice and against the peace and dignity of the said State of Florida and the people thereof.

[fol. 121] 10

That the relator avers that the power and authority of the National War Labor Board in regard to matters pertaining to production in furtherance of the war effort is distinct from the question of whether or not the contract in question violates said constitutional amendment, and relator further avers that, in bringing this suit, he seeks to obtain a determination of the legal effect of said constitutional amendment upon the above mentioned agreement, subject to the superior authority of said War Labor Board to make such directives regarding the carrying out of said agreement as appear to it to be required in the interests of war production, even though such directives should result in suspending the operation of the Court's order on the question of the legal effect of said amendment.

The relator avers that whatever final order is made by your Honorable Court in this cause should be made in appropriate recognition of the war powers of said War Labor Board with respect to its emergency control over industry involved in war production; and, consistent with this averment, relator will request the National War Labor Board to

participate in this proceeding as Amicus Curiae or in such other capacity as to it may seem most appropriate in ample time for it to do so prior to the return day of the quo warranto writ asked for herein.

That the relator would not oppose the granting of application for intervention in this cause by the labor unions named in this information, subject to the laws and rules applicable in the case of intervening parties and strictly as intervenors.

Whereon the said Attorney General of the State of Florida, for and in behalf of the said State and the people thereof, prays the advice of this Court in the premises and that due process of law issue against the said Merrill-Stevens [fols. 122-123] Dry Dock and Repair Company in this behalf, and that the Court will declare that the said Respondent is unlawfully usurping, exercising and enjoying its said permit to transact business in the State of Florida by doing business under and with the aid of the complained of portions, hereinabove set forth, in its contract aforesaid, contrary to the law, and that it be ousted from the continuation thereof, subject to any suspension of such ouster made necessary by the exercise of any power vested by law in the National War Labor Board.

J. Tom Watson, as Attorney General of the State of Florida.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 124] On the 24th day of May 1945, information in Quo Warranto was filed in evidence in the following words and figures to-wit:

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT, IN AND FOR BAY COUNTY, FLORIDA

STATE OF FLORIDA, ex rel. J. TOM WATSON, as Attorney General of Said State, Relator,

vs.

J. A. JONES CONSTRUCTION COMPANY, a North Carolina corporation, Respondent.

INFORMATION IN QUO WARRANTO

Comes now J. Tom Watson, as Attorney General of the State of Florida, and the relator herein, who sues for and

in behalf of the State of Florida and the people thereof, and, for said State and the people thereof, gives this Honorable Court to understand and be informed as follows:

1

The Respondent, J. A. Jones Construction Company, is a corporation organized and existing under and by virtue of the general corporate laws of the State of North Carolina, the same having been incorporated on or about January 20, 1920.

2

That the Respondent was organized and incorporated for the purposes of carrying on a shipbuilding business, and for other and further purposes, as are mentioned in a duly authenticated copy of its articles of incorporation on file in the office of Secretary of State of the State of Florida, at the Capitol Building, in Tallahassee, Florida.

3

That, on or about July 29, 1942, the Respondent duly obtained from the Secretary of State of Florida a permit which authorized and permitted it to transact business in the State of Florida for the objects and purposes, and with the rights, powers and privileges contained in and provided by its said articles of incorporation, when not con- [fol. 125] trary to the Laws of the State of Florida; and that the Respondent is now engaged in carrying on a shipbuilding business at or near Panama City, in Bay County, Florida.

4

That the Respondent, by obtaining and accepting the above mentioned permit to transact business in the State of Florida, consented and agreed with the State of Florida and the people thereof, or obligated itself, to:

(a) Use and exercise only such powers and franchises as are expressly and impliedly conferred upon it by its charter and the Constitution, statutes and laws of the State of Florida;

(b) Refrain from exercising or attempting to exercise any powers or franchises denied to it, or not conferred upon it, by the Constitution, statutes and laws of the State of Florida;

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(c) Refrain from entering into contracts or agreements not within its express or implied powers and franchises, or in violation of the Constitution, statutes and laws of the State of Florida; or, that are otherwise ultra vires, or contrary to the public policy of this state;

(d) Refrain from taking any action or doing or performing anything in violation of, or contrary to, any of the laws of this state.

5

That on or about November 20, 1942, the said Respondent made and entered into an agreement with the following labor unions, which unions cover practically all, if not all, of the crafts and workers employed by the Respondent in its shipbuilding plant in or near the city of Panama City, Bay County, Florida, to-wit:

International Association of Machinists, International Brotherhood of Electrical Workers, International Brotherhood of Boilermakers, Iron Shipbuilders (Welders) and [fol. 126] Helpers of America, International Association of Bridge, Structural and Ornamental Iron Workers, International Union of Operating Engineers, International Association of Sheet Metal Workers, United Association of Journeymen Plumbers and Steamfitters of America and Canada, United Brotherhood of Carpenters and Joiners of America, International Brotherhood of Painters and Decorators,

Page 3

International Hod Carriers, Building and Common Laborers, International Brotherhood of Blacksmiths, Drop Forgers and Helpers of America, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,

in affiliation with the Panama City Metal Trades Council of the Metal Trades Department of the American Federation of Labor, and other similar trade unions that may later be found to have proper jurisdiction, as will more fully appear by reference to a true and correct copy of said agreement hereto attached as Exhibit "A" and made a part hereof by reference.

6

That in and by said agreement the Respondent specifically contracted and agreed with the above mentioned labor unions and organizations as follows:

"Article 9

"Section 1. When new employees are required, the Business Representatives of the Craft concerned must send qualified persons to the plant.

"Sec. 2. Employer agrees to employ and retain in its employ only members in good standing in their respective Unions, which are or may become parties to this agreement. Should the Unions be unable to furnish the necessary employees, the Employer may employ such workers as are available and retain such available workers in its employ until the respective Union is able to furnish the necessary qualified workers, unless the available workers as employed by the Employer become members of the respective Unions."

[fol. 127] 7

That the legislature of Florida, at its 29th regular session, in 1943, by house joint resolution number thirteen submitted, the hereinafter quoted amendment of Section 12 of the Declaration of Rights of the Constitution of Florida, to the people of Florida, which proposed amendment was adopted by the people of Florida at the general election of 1944. The said section of the Declaration of Rights, as amended, is as follows:

Section 12. No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any original case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken without just compensation. *The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union, or labor organization;* provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer. (Italics supplied.)

8

That the Respondent and its agents, officers and directors are complying with and abiding by the terms, requirements, conditions and specifications in said agreement contained, notwithstanding the adoption of said amendment of Section 12 of the Declaration of Rights of the Constitution of Florida, and, by so doing, are:

(a) Denying or abridging the right of the people of Florida to work, on account of membership or nonmembership in a labor union or organization, and are, thereby, violating the organic laws of this state;

Page 5

(b) Illegally agreeing between themselves, to prevent qualified persons in Florida from obtaining or procuring work on account of membership or nonmembership in a labor union or organization;

(c) Illegally agreeing, between themselves, to prevent qualified persons in Florida from obtaining or procuring [fol. 128] work in the shipbuilding industry in Florida.

9

That, by virtue of the adoption of said constitutional amendment the above quoted portion of said agreement, in so far as it relates to and provides for a closed shop, has become and is illegal, without force or effect, in violation of the laws and Constitution of the State of Florida, contrary to the Respondent's said permit to transact business in the State of Florida, and outside of any warrant, charter or grant to the Respondent. That, nevertheless, by complying with and abiding by the above quoted terms, requirements, conditions and specifications of said agreement, the Respondent has usurped and does still usurp the franchise, privilege or liberty of performing the above quoted portion of said agreement, against the State of Florida and the people thereof to their damage and prejudice and against the peace and dignity of the said State of Florida and the people thereof.

10

That the relator avers that the power and authority of the National War Labor Board in regard to matters per-

taining to production in furtherance of the war effort is distinct from the question of whether or not the contract in question violates said constitutional amendment, and relator further

Page 6

avers that, in bringing this suit, he seeks to obtain a determination of the legal effect of said constitutional amendment upon the above mentioned agreement, subject to the superior authority of said War Labor Board to make such directives regarding the carrying out of said agreement as appear to it to be required in the interest of war production, even though such directives should result in suspending the operation of the Court's order on the question of the legal effect of said amendment.

[fol. 129] The relator avers that whatever final order is made by your Honorable Court in this cause should be made in appropriate recognition of the war powers of said War Labor Board with respect to its emergency control over industry involved in war production; and, consistent with this averment, relator will request the National War Labor Board to participate in this proceeding as Amicus Curiae or in such other capacity as to it may seem most appropriate in ample time for it to do so prior to the return day of the quo warranto writ asked for herein.

That the relator would not oppose the granting or application for intervention in this cause by the labor unions named in this information, subject to the laws and rules applicable in the case of intervening parties and strictly as intervenors.

Whereon the said Attorney General of the State of Florida, for and in behalf of the said State and the people thereof, prays the advice of this Court in the premises and that due process of law issue against the said J. A. Jones Construction Company in this behalf,

Page 7

and that the Court will declare that the said respondent is unlawfully usurping, exercising and enjoying its said permit to transact business in the State of Florida by doing business under and with the aid of the complained of *the complained of* portions, hereinabove set forth, in its con-

tract aforesaid, contrary to the law, and that it be ousted from the continuation thereof, subject to any suspension of such ouster made necessary by the exercise of any power vested by law in the National War Labor Board.

J. Tom Watson, as Attorney General of the State of Florida.

Page 8

(Exhibit "A" Omitted Pertaining to the Book Entitled "Metal Trades Agreement between Panama City Metal Trades Council and the J. A. Jones Construction Co., Inc.")

[fol. 130] In the Circuit Court of the Fourteenth Judicial Circuit in and for Bay County, Florida

State of Florida, ex rel., J. Tom Watson, as Attorney General of said State, Relator,

vs.

J. A. Jones Construction Company, a North Carolina corporation, Respondent

Writ in Quo Warranto

In the Name of the State of Florida:

To All and Singular the Sheriffs of the State of Florida:

You are hereby commanded to summons the Respondent, J. A. Jones Construction Company, a North Carolina corporation doing business in the State of Florida, to be and appear before this Court on Tuesday, the 20 day of March, A. D., 1945, then and there to file with the Clerk of this Court written answer the information filed therein by the Honorable J. Tom Watson, Attorney General of the State of Florida, in behalf of the people of said State of Florida, against the said corporation, for usurping upon the people of said State certain liberties, privileges and franchises in said information specified.

In Witness Whereof, I, E. C. Welch, one of the Judges of said Court, have hereunto set my hand, and have caused the seal of said Court to be hereunto affixed, at Marianna, Florida, this the 14 day of February, A. D., 1945.

E. C. Welch, Circuit Judge. (Circuit Court Seal.)

The relator is directed to forthwith give notice by registered mail to each of the unions whose contracts are involved in this proceeding.

E. C. Welch, Circuit Judge.

[fols. 131-132] Received this Summons on the 15th day of February, 1945, and served same on the 16th day of February, 1945, by delivering a true copy to Daniel W. Bateman, Executive Assistant, of J. A. Jones Construction Company, Incorporated, said Summons having been served at 11:35 A. M. February 16, 1945.

Service	$2.00
Copy	.35
Mileage 6	.75
Return	.25
Total	$3.35

Coy C. Rushing, Sheriff, by C. R. Dudley, D. S.

Clerk's Certificate to foregoing papers omitted in printing.

[fol. 133] On the 24th day of May 1945, Information in Quo Warranto was filed in Evidence in the following words and figures to-wit:

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

26146-A

STATE OF FLORIDA, ex rel. J. Tom Watson, as Attorney General of said State, Relator,

vs.

MIAMI SHIPBUILDING CORPORATION, a Florida Corporation, Respondent

INFORMATION IN QUO WARRANTO—Filed February 19, 1945

Comes now J. Tom Watson, as Attorney General of the State of Florida, and the relator herein, who sues for and in behalf of the State of Florida and the people thereof,

and, for said State and the people thereof, gives this Honorable Court to understand and be informed as follows:

1

That, on or about March 1, 1937, Samarco Corporation, and Fogal Boat Yard, Incorporated, being corporations organized and then existing under and by virtue of the general corporate laws of Florida, became and were duly consolidated in accordance with law under the name of Fogal Boat Yard, Inc. That, on or about June 12, 1939, the certificate of incorporation of said Fogal Boat Yard, Inc., was duly amended in accordance with law by changing its name to Miami Shipbuilding Corporation; and that said Miami Shipbuilding Corporation, the Respondent herein, is a corporation created and existing under and by virtue of the general corporate laws of Florida.

[fol. 134]

2

That the Respondent was organized and incorporated for the purpose of carrying on a shipbuilding business, and for other and further purposes, as are mentioned in its articles of incorporation on file in the office of the Secretary of State of the State of Florida, at the Capitol Building, in Tallahassee, Florida, and is now engaged in carrying on such shipbuilding business at or near the City of Miami, in Dade County, Florida.

3

That the Respondent in and by its acceptance of the articles of incorporation aforesaid and by its qualifications as a Florida corporation with the Secretary of State of the State of Florida, consented and agreed with the State of Florida and the people thereof, or obligated itself, to:

(a) Use and exercise only such powers and franchises as are expressly and impliedly conferred upon it by its charter and the Constitution, statutes and laws of the State of Florida;

(b) Refrain from exercising or attempting to exercise any powers or franchises denied to it, or not conferred upon it, by the Constitution, statutes and laws of the State of Florida;

(c) Refrain from entering into contracts or agreements not within its express or implied powers and franchises, or in violation of the Constitution, statutes and laws of the State of Florida; or, that are otherwise ultra vires, or contrary to the public policy of this state;

(d) Refrain from taking any action or doing or performing anything in violation of, or contrary to, any of the statutes and laws of this state.

[fol. 135]

4

That, on or about June 7, 1944, the said Respondent made and entered into an agreement with the following labor union, which union covers practically all, if not all, of the crafts and workers employed by the Respondent in its shipbuilding plant in or near the City of Miami, Dade County, Florida, to-wit: Local No. 59 of the Industrial Union of Marine & Shipbuilding Workers of America, (CIO), which union is affiliated with the Congress of Industrial Organizations, as will more fully appear by reference to a true and correct copy of said agreement hereto attached as Exhibit "A" and made a part hereof by reference.

5

That in and by said agreement the Respondent specifically contracted and agreed with the above mentioned labor union and organization as follows:

"Article II

Union Security

"In order to secure the increased production which may be expected from entire harmony between workers and the Company, and in the interest of increased cooperation between Union and Management, the parties hereto agree as follows:

"All employees who, on July 9th, 1944, are members of the Union in good standing in accordance with the Constitution and By-Laws; and all employees who become members after that date, shall as a condition of employment maintain their membership in the Union in good standing for the duration of this Agreement. The Union shall, immediately after July 9th, 1944, furnish

the Company with a notarized list of its members in good standing as of that date.

"It is understood that members of the Union may, if they so desire, terminate their membership in the Union between the dates of June 24th, 1944, and July 8th, 1944, inclusive, without penalty, provided they have paid their dues in full (up to and including the month of June, 1944) as of the date they submit their resignation. The resignation must be presented in writing, either in person or by mail, to the Union office at 730 West Flagler Street, Miami, Florida, or to any officer of the Union."

[fol. 136] 6

That the Legislature of Florida, at its 29th regular session, in 1943, by house joint resolution number thirteen, submitted the hereinafter quoted amendment of Section 12 of the Declaration of Rights of the Constitution of Florida to the people of Florida, which proposed amendment was adopted by the people of Florida at the general election of 1944. The said section of the Declaration of Rights, as amended, is as follows:

Section 12. No person shall be subjected to be twice put in jeopard for the same offense, nor compelled in any original case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken without just compensation. *The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union, or labor organization;* provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer. (Italics supplied.)

7

That the Respondent and its agents, officers and directors are complying with and abiding by the terms, requirements, conditions and specifications in said agreement mentioned and contained, notwithstanding the adoption of said amendment of Section 12 of the Declaration of Rights of the Constitution of Florida, and, by so doing, are:

(a) Denying or abridging the rights of the people of Florida to work, on account of membership or nonmembership in a labor union or organization, and are, thereby, violating the organic laws of this state;

(b) Illegally agreeing to require their employees who were members of said union in good standing on July 9, 1944, to maintain their membership in said union in good standing for the duration of said agreement as a condition of their employment;

(c) Illegally agreeing to require their employees who become members of said union after July 9, 1944, to maintain their membership in said union in good standing for the duration of said agreement as a condition of their employment.

[fol. 137] 8

That, by virtue of the adoption of said constitutional amendment the above quoted portion of said agreement, in so far as it relates to and provides for maintenance of membership in said union, has become and is illegal, without force and effect, in violation of the laws and Constitution of the State of Florida, and outside of any warrant, charter or grant to the Respondent. That, nevertheless, by complying with and abiding by the above quoted terms, requirements, conditions and specifications of said agreement, the Respondent has usurped and does still usurp the franchise, privilege or liberty of performing the above quoted portion of said agreement, against the State of Florida and the people thereof to their damage and prejudice and against the peace and dgnity of the said State of Florida and the people thereof.

9

That the relator avers that the power and authority of the National War Labor Board in regard to matters pertaining to production in furtherance of the war effort is distinct from the question of whether or not the contract in question violates said constitutional amendment, and relator further avers that, in bringing this suit, he seeks to obtain a determination of the legal effect of said constitutional amendment upon the above mentioned agreement, subject to the superior authority of said War Labor Board to make such

directives regarding the carrying out of said agreement as appear to it to be required in the interest of war production, even though such directives should result in suspending the operation of the Court's order on the question of the legal effect of said amendment.

The relator avers that whatever final order is made by your Honorable Court in this cause should be made in appropriate recognition of the war powers of said War Labor Board with respect to its emergency control over industry involved in war production; and, consistent with this averment, relator will request the National War Labor Board to participate in this proceeding as Amicus Curiae or in such other capacity as to it may seem most appropriate [fols. 138-139] in ample time for it to do so prior to the return day of the quo warranto writ asked for herein.

That the relator would not oppose the granting of application for intervention in this cause by the labor unions named in this information, subject to the laws and rules applicable in the case of intervening parties and strictly as intervenors.

Whereon the said Attorney General of the State of Florida, for and in behalf of the said State and the people thereof, prays the advice of this Court in the premises and that due process of law issue against the said Miami Shipbuilding Corporation in this behalf, and that the Court will declare that the said Respondent is unlawfully usurping, exercising and enjoying its corporate franchises, privileges and rights by doing business under and with the aid of the complained of portions, hereinabove set forth, in its contract aforesaid, contrary to law, and that it be ousted from the continuation thereof, subject to any suspension of such ouster made necessary by the exercise of any power vested by law in the National War Labor Board.

J. Tom Watson, as Attorney General of the State of Florida.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 140] On the 24th day of May 1945, Information In Quo Warranto was filed in evidence in the following words and figures to-wit:

IN THE CIRCUIT COURT OF THE THIRTEETH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

23999-L

STATE OF FLORIDA, ex rel. J. TOM WATSON, as Attorney General of said State, Relator,

vs.

TAMPA SHIPBUILDING COMPANY, INCORPORATED, a Florida Corporation, Respondent

INFORMATION IN QUO WARRANTO—Filed February 16, 1945

Comes now J. Tom Watson, as Attorney General of the State of Florida, and the relator herein, who sues for and in behalf of the State of Florida and the people thereof, and, for said State and the people thereof, gives this Honorable Court to understand and be informed as follows:

1

The Respondent, Tampa Shipbuilding Company Incorporated, is a corporation organized and existing under and by virtue of the general corporate laws of this State, the same having been incorporated on or about November 7, 1940.

[fol. 141]

2

That the Respondent was organized and incorporated for the purpose of carrying on a shipbuilding business, and for other and further purposes, as are mentioned in its articles of incorporation on file in the office of the Secretary of State of the State of Florida, at the Capitol Building, in Tallahassee, Florida, and is now engaged in carrying on such shipbuilding business at or near the city of Tampa, in Hillsborough County, Florida.

3

That the Respondent in and by its acceptance of the articles of incorporation aforesaid and by its qualifications as a Florida corporation with the Secretary of State of the State of Florida, consented and agreed with the State of Florida and the people thereof, or obligated itself, to:

(a) Use and exercise only such powers and franchises as are expressly and impliedly conferred upon it by its charter and the Constitution, statutes and laws of the State of Florida;

(b) Refrain from exercising or attempting to exercise any powers or franchises denied to it, or not conferred upon it, by the Constitution, statutes and laws of the State of Florida;

(c) Refrain from entering into contracts or agreements not within its express or implied powers and franchises, or in violation of the Constitution, statutes and laws of the State of Florida; or, that are otherwise ultra vires, or contrary to the public policy of this state;

(d) Refrain from taking any action or doing or performing anything in violation of, or contrary to, any of the statutes and laws of this state.

4

That on or about July 16, 1941 the said Respondent made and entered into an agreement with the following labor [fol. 142] unions, which unions cover practically all, if not all, of the crafts and workers employed by the Respondent in its shipbuilding plant in or near the city of Tampa, Hillsborough County, Florida, to-wit:

International Association of Machinists, International Brotherhood of Electrical Workers, International Brotherhood of Boilermakers, Iron Shipbuilders, Welders and Helpers of America, International Union of Operating Engineers, International Association of Sheet Metal Workers, United Association of Journeymen Plumbers and Steamfitters of America and Canada, United Brotherhood of Carpenters and Joiners of America, International Brotherhood of Painters and Decorators, International Hod Carriers, Building and Common Laborers, International Brotherhood of Blacksmiths, Drop Forgers and Helpers of America, International Association of Bridge and Structural Iron Workers of America, Publicity News Writers & Office Workers, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, International Fed-

eration of Technical Engineers, Architects and Draftsmen's Union.

in affiliation with the Tampa Metal Trades Council of the Metal Trades Department of the American Federation of Labor, and other similar trade unions that may later be found to have proper jurisdiction, as will more fully appear by reference to a true and correct copy of said agreement hereto attached as Exhibit "A" and made a part hereof by reference.

5

That in and by said agreement the Respondent specifically contracted and agreed with the above mentioned labor unions and organizations as follows:

[fol. 143] "Article XVII

"Section 1. When new employees are required, the Business Agent of the Craft concerned will be required to send qualified persons to the plant.

"Section 2. If the Union's Business Representatives are unable to furnish persons required for employment within a twenty-four (24) hour period, the Management may employ such workers as may be available, with the understanding that such workers shall be required to file application for membership in their respective Union within a period of fifteen (15) days, if retained by the Company and the membership is acceptable to the Union operating under the terms of this agreement.

"Section 3. The Company agrees to retain in their employ only members of the Union which are or may become parties to this agreement except as otherwise provided herein."

6

That the legislature of Florida, at its 29th regular session, in 1943, by house joint resolution number thirteen, submitted the herginafter quoted amendment of Section 12 of the Declaration of Rights of the Constitution of Florida to the people of Florida, which proposed amendment was adopted by the people of Florida at the general election of 1944. The said section of the Declaration of Rights, as amended, is as follows:

Section 12. No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any original case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken without just compensation. *The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union, or labor organization;* provided, that This Clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer. (Italics supplied.)

7

That the Respondent and its agents, officers and directors are complying with and abiding by the terms, requirements, [fol. 144] conditions and specifications in said agreement contained, notwithstanding the adoption of said amendment of Section 12 of the Declaration of Rights of the Constitution of Florida, and, by so doing, are:

(a) Denying or abridging the right of the people of Florida to work on account of membership or nonmembership in a labor union or organization, and are, thereby, violating the organic laws of this state;

(b) Illegally agreeing between themselves, to prevent qualified persons in Florida from obtaining or procuring work on account of membership or nonmembership in a labor union or organization;

(c) Illegally agreeing, between themselves, to prevent qualified persons in Florida from obtaining or procuring work in the shipbuilding industry in Florida.

8

That, by virtue of the adoption of said constitutional amendment the above quoted portion of said agreement, in so far as it relates to and provides for a closed shop, has become and is illegal, without force or effect, in violation of the laws and Constitution of the State of Florida, and outside of any warrant, charter or grant to the Respondent. That, nevertheless, by complying with and abiding by the

above quoted terms, requirements, conditions and specifications of said agreement, the Respondent has usurped and does still usurp the franchise, privilege or liberty of performing the above quoted portion of said agreement, against the State of Florida and the people thereof to their damage and prejudice and against the peace and dignify of the said State of Florida and the people thereof.

9

That the relator avers that the power and authority of the National War Labor Board in regard to matters pertaining to production in furtherance of the war effort is distinct from the question of whether or not the contract in question violates said constitutional amendment, and relator further avers that, in bringing this suit, he seeks to obtain a deter- [fol. 145] mination of the legal effect of said constitutional amendment upon the above mentioned agreement, subject to the superior authority of said War Labor Board to make such directives regarding the carrying out of said agreement as appear to it to be required in the interest of war production, even though such directives should result in suspending the operation of the Court's order on the question of the legal effect of said amendment.

The relator avers that whatever final order is made by your Honorable Court in this cause should be made in appropriate recognition of the war powers of said War Labor Board with respect to its emergency control over industry involved in war production; and, consistent with this averment, relator will request the National War Labor Board to participate in this proceeding as Amicus Curiae or in such other capacity as to it may seem most appropriate in ample time for it to do so prior to the return day of the quo warranto writ asked for herein.

That the relator would not oppose the granting of application for intervention in this cause by the labor unions named in this information, subject to the laws and rules applicable in the case of intervening parties and strictly as intervenors.

Whereon the said Attorney General of the State of Florida, for and in behalf of the said State and the people thereof, prays the advice of this Court in the premises and that due process of law issue against the said Tampa Shipbuilding Company, Incorporated, in this behalf, and

that the Court will declare that the said Respondent is unlawfully usurping, exercising and enjoying its corporate franchises, privileges and rights by doing business under and with the aid of the complained of portions, hereinabove set forth, in its contract aforesaid, contrary to law, and that it be ousted from the continuation thereof, subject to any suspension of such ouster made necessary by the exercise of any power vested by law in the National War Labor Board.

J. Tom Watson, as Attorney General of the State of Florida.

[fol. 146] EXHIBIT "A" TO INFORMATION

Agreement

Between

Tampa Shipbuilding Co., Inc.,

and

Metal Trades Department

of the

American Federation of Labor

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[Title 156] SUPPLEMENTAL AGREEMENT

This Agreement entered into this 16th day of July, 1941 between the Tampa Shipbuilding Company, Inc., of Tampa, Florida, hereinafter referred to as the "Employer", and the International Association of Machinists, the International Brotherhood of Electrical Workers, the International Brotherhood of Boilermakers, Iron Shipbuilders, Welders and Helpers of America, the International Union of Operating Engineers, the International Association of Sheet Metal Workers, the United Association of Journeymen Plumbers and Steamfitters of America, and Canada, the United Brotherhood of Carpenters and Joiners of America, the International Brotherhood of Painters and Decorators, the International Hod Carriers, Building and Common Laborers, the International Brotherhood of Blacksmiths, Drop Forgers and Helpers of America, the International Association of Bridge and Structural Iron Workers of America, the Publicity News Writers and Office Workers of America, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, International Federation of Technical Engineers, Architects and Draftsmen's Union in affiliation with the Tampa Metal

Trades Council and the Metal Trades Department of the American Federation of Labor, and any other International Union affiliated with the Metal Trades Department that later it may be found to have proper jurisdiction, hereinafter referred to as the "Unions," Witnesseth:

Whereas, the Employer and the Unions are now operating under an agreement negotiated in September, 1940, between Tampa Shipbuilding and Engineering Company, predecessor of the Tampa Shipbuilding Company, Incorporated, and the Unions; and

Whereas, the Gulf Zone Stabilization Conference, at its sessions in New Orleans in June, 1941, established certain [fol. 157] basic conditions affecting wages and employment in all of the shipyards in the Gulf Zone, subject to the ratification by the several parties thereto; and

Whereas, the said Gulf Zone Standards have been approved by the Secretary of the Navy for application to shipyards holding Naval construction contracts:

This Agreement entered into for the purpose of promoting harmony and cooperation between the employees and employer as represented by these contracting parties,

Now, Therefore, in consideration of the premises and of the mutual agreements herein contained to be performed by the parties hereto, respectively, it is agreed as follows:

This Agreement covers the entire operations of the Tampa Shipbuilding Company, Incorporated (except Building Trades Construction)

Retroactive Provision

In accordance with the notice to employees of the company, inserted in their payroll envelopes on April 25, 1941, the wage rates contained herein will be retroactive to April 25, 1941.

ARTICLE I

Hours of Employment and Overtime Provisions for New Construction

Section 1.

A. Eight (8) hours shall constitute a work day, and Monday to Friday inclusive shall constitute a work week. Unless local conditions require the establishment of a different starting time, which may be done by mutual consent

of the parties hereto, the first shift shall start not earlier than 7 a. m. and not later than 8 a. m. and continue eight (8) consecutive hours exclusive of lunch period.

B. Where two or three regularly scheduled shifts are worked, for the purpose of calculating the overtime provisions which may be applicable to the second and/or third shifts, the regularly established starting time of the first or day shift shall be recognized as the beginning of the 24 hour work day, and the second and/or third shifts immediately following shall be considered as belonging to that day. For example:

A shift working between Friday midnight and 8 a. m. Saturday shall be considered as a Friday Shift, payable at the regular hourly rate of pay.

[fol. 158] A shift working between Saturday midnight and 8 a. m. Sunday shall be considered as a Saturday shift, payable at one and one-half times the regular rate of pay.

A shift working between Sunday midnight and 8 a. m. Monday shall be considered as a Sunday shift, payable at double the regular hourly rate of pay.

A shift working between midnight of the day immediately preceding a holiday and 8 a. m. of the holiday shall be considered as a shift of the day before the holiday, payable at the hourly rate of such previous day.

A shift working between midnight of a holiday and 8 A. M. of the day following the holiday shall be considered as a holiday shift, payable at double the regular hourly rate of pay.

C. Any hours worked out of the regular scheduled shift hours per day or days of the work week, Monday to Friday inclusive, shall be paid for at the rate of one and one-half times the regular hourly rate of pay, except as hereinafter provided in Sections D and E of this article.

D. All work performed during a Saturday work day shall be paid for at one and one-half times the regular hourly rate of pay; provided, that for the purposes of this agreement, where either two or three scheduled shifts are worked on Saturdays, they shall both be considered as belonging to the Saturday work day and shall be paid for at one and one-half times the regular hourly rate of pay.

E. The few special exceptions to the foregoing already included in existing agreements between the parties as to

employees working out of their regular shift are hereby recognized as permissible.

F. The foregoing provisions relative to overtime payment and for Saturday work shall be effective only during the life of this agreement.

Article II

Hours of Employment and Overtime Provisions for Ship Repairs

Section 1. The foregoing provisions regarding new construction work shall apply also to Ship repair Work except as modified in this Article 2, as follows:

[fol. 159] (a) On Ship Repair Work any hours worked out of the regular scheduled shift hours per day or days of the work week, Monday to Friday inclusive, and on Saturdays, Sundays, and agreed holidays, shall be paid for at double the regular hourly rate of pay.

(b) This double time for overtime on ship repair work shall not apply to large Government conversion jobs, which shall be classified as new construction. A large Government conversion job is hereby defined as one on a vessel which has been in service, for which the Government accepted basic estimate for direct labor cost is $112,500.00 or more, and which involves changing the character and purpose of the vessel from that existing at the time the conversion is undertaken to an entirely different character and purpose made necessary by the National Emergency. In order that there may be no misunderstanding in the matter the Government representatives shall cause due notice to be posted when such jobs are to be undertaken, which notice shall definitely state whether double time or time and one-half is to be paid for overtime in conformity with the foregoing definition, which overtime rate shall apply until the job is completed.

(c) "New construction" as used in this agreement shall be construed as covering any newly-constructed floating structure prior to its completion, final acceptance and employment in the service for which it has been constructed. New construction (as differentiated from repair) shall include not only alterations and changes but substantial rebuilding of a vessel prior to its being put in service.

(d) Special overtime arrangements for certain employees now practiced are permissible.

(e) Men needed for Drydock work may be called in before or after regularly established hours, and shall be paid regular straight time rate for eight (8) hours work. This shall not apply to the mechanical forces. Section 2. All employees coming under the provisions of this agreement shall be paid on an hourly basis, excepting as otherwise provided for. Section 3, This addendum to this Article is intended to remove the inhibition against piece work, and permit the question to be taken up for negotiation, with the understanding that in event the employees, working on piece work schedules who are unable to make the equivalent of a day workers pay, shall in such instances receive no less [fol. 160] than the day worker's compensation.

Article III

Shift Hours and Premiums as to New Construction and Repairs

Section 1. Shift work will be permitted in all classifications without restriction on the following basis:

A. When two shifts are worked:

(1) First or regular day shift: An 8 hour work period exclusive of lunch period. Pay for a full shift period shall be a sum equivalent to eight (8) times the regular hourly rate with no premium.

(2) Second Shift: An 8 hour work period exclusive of lunch period. Pay for a full second shift period shall be a sum equivalent to eight (8) times the regular hourly rate, to which sum shall be added a premium of forty cents (40¢) for each full shift.

B. When three shifts are worked:

(1) The regular starting time of the day shift shall be as set forth in the article entitled Hours of Employment and Overtime Provisions as to New Construction.

(2) First or regular day shift: An 8½ hour period less thirty (30) minutes for meals on the employee's time. Pay for a full shift period shall be a sum equivalent to eight (8) times the regular hourly rate with no premium.

(3) Second Shift: An 8 hour period less thirty (30) minutes for meals on the employee's time. Pay for a full second shift period shall be a sum equivalent to eight (8) times the regular hourly rate, to which sum shall be added a premium of forty cents (40¢) for each full shift.

(4) Third shift: A 7½ hour period less thirty (30) minutes for meals on the employee's time. Pay for a full third shift period shall be a sum equivalent to eight (8) times the regular hourly rate, to which sum shall be added a premium of forty cents (40¢) for each full shift.

C. For work on any shift less than the full shift period, pay shall be the corresponding proportionate part of the pay for the full shift period, provided such an amount be not less than the minimum pay otherwise provided for in the supplementary agreements.

[fol. 16] ARTICLE IV

Basic Wage for Standard Skilled Mechanics

The wage rates of all standard skilled mechanics in the Gulf Zone engaged in the construction or repair of vessels shall be one dollar and seven cents ($1.07) per hour; and equitable increases shall be made for other employees through negotiations between individual employers and the labor representatives of their employees; provided, however, that the establishment of the foregoing basic mechanic's rate shall not operate to reduce the present wage of any employee.

ARTICLE V

Wage Premiums

The premiums now being paid above the basic mechanic's wage rate shall be maintained; provided that hereafter neither the number of such premium men nor the amount of any premium above the basic mechanic's rate, or above any established rate which is greater than the basic mechanic's rate, shall be increased without the official approval of the Navy Department and/or the U. S. Maritime Commission.

Article VI

Machinery for Adjustment of Complaints, Disputes or Grievances

All complain-s, disputes or grievances shall be promptly settled between representatives of the employers and the employees. Supplemental agreements shall establish the time limitations within which each step in the adjustment of a complaint, dispute or grievance shall be completed where similar machinery does not now exist. Should no agreement be reached, the dispute shall be submitted to arbitration. Definite arbitration machinery shall be established by supplemental agreements where similar machinery does not now exist. The decision of the arbiters shall be within the scope and terms of such supplemental agreement, shall not change any of its terms, and shall be final and binding on the parties.

There are hereby established the following committees for the purpose of handling complaints, disputes and grievances within the scope of this agreement which may arise during the life of this agreement:

[fol. 162] (1) A Craft Committee composed of not less than two nor more than three employee members from said Craft for the handling of complaints, disputes and grievances within such craft.

(2) A Joint or Metal Trades Committee composed of not more than five employee members for the purpose of handling general complaints, disputes and grievances referred to it.

Provided, that no more than one member shall be drawn from any one Craft and further provided that if a Craft which has no representative on said Committee shall refer a complaint, dispute or grievance to same, then said Committee shall be increased temporarily for the purpose of handling such complaint, by one additional employee member, selected from the Craft which has submitted the complaint, dispute or grievance.

Complaints, disputes or grievances of any employee or group of employees shall within three days from the date of the occurrence causing such complaint, dispute or grievance be referred in writing to the respec-

tive Craft Committee, and if not referred within three days shall be deemed to have been waived.

The Craft Committee shall call said complaints, disputes or grievances to the attention of the foreman or department head, and if same be not adjusted with said foreman or department head within three days file same in writing with the management and Joint or Metal Trades Committee. The Joint or Metal Trades Committee shall then handle such complaints, disputes or grievances with management at the next mutually arranged meeting between the Joint or Metal Trades Committee and Management. Provided, in this connection, that such meeting shall at no time be delayed longer than one week beyond the date of the filing of the complaint with the Joint or Metal Trades Committee and Management, and provided further that at each such meeting all pending claims shall be handled. Should any complaint, dispute or grievance not be adjusted in the foregoing manner, same shall be referred to the Adjustment Board hereinafter provided for.

There is hereby established an Adjustment Board to be composed of three (3) members selected by the Employer from Management and three (3) members selected by the Unions from employees, who shall consider all disputes or grievances referred to them and render decision by secret majority vote. Such decisions shall be binding on both parties.

Should the Adjustment Board be unable to reach a decision within one week, the matter shall be immediately submitted to arbitration as hereinafter provided for.

Arbitration of Disputes:

If, after the steps covered by Article 2 have been employed and the parties be unable to adjust any grievances or disputes arising in connection with the relationship established between the Employer and the Unions by this [fol. 163] agreement, such grievance or dispute shall be referred to an Arbitration Committee, consisting of three (3) representatives selected by the employer, three (3) representatives selected by the Unions and a seventh (7th) member to be chosen by these six.

In the event the six arbiters designated by the parties shall be unable to agree upon the seventh (7th) arbiter with five (5) days, the Conciliation Service of the U. S. Department of Labor shall select a panel of five (5) individuals, all of whom shall be impartial persons qualified to act as arbiters and resident in the state in which the Employer's plant is located and from which the complaint, dispute or grievance arises. Both the Employer and the Unions shall equally have the right to reject any or all of the five (5) names of these nominees.

If after the rejections by both parties of the members of such panel are made the one remaining, or in the event more than one remains on the list, the one so remaining nearest the top of the list shall become the seventh (7th) arbiter.

In the event all the names on such panel are rejected, the six (6) members of the Arbitration Committee appointed by the Employer and Unions shall immediately request the Senior District Judge of the United States District Court of the Judicial District in which the plant of the Employer is located to nominate one principal and four alternates, all of whom shall be impartial persons qualified to act as arbiters and resident of the state in which the Employer's plant is located and from which the complaint, dispute or grievance arises. The Employer and the Unions shall each have the choice of rejecting the names of two of these five nominees and the remaining Fifth one shall be the seventh (7th) arbiter. In the event the same nominee shall be rejected by both parties, leaving more than one nominee on the list, the one nearest the top of the list, as submitted by the Senior District Judge of the United States District Court of the Judicial District in which the plant of the Employer is located shall act as the seventh (7th) arbiter.

Any expenses of arbitration shall be borne by and divided equally between the Unions and the Employer. The decision of a majority of the Arbitration Committee shall be final and binding upon the parties hereto. Such decision [fol. 164] shall be within the scope and terms of this agreement and shall not change in any of its terms or conditions. The arbiters shall in their decision specify whether or not the decision is retroactive and the effective date thereof.

The Arbitration Committee shall exert every reasonable effort to render a final decision within thirty (30) days

from the date any dispute, complaint or grievance is submitted to it.

Grievances will be preferable handled by committees with the management after working hours. Committeemen shall be paid one (1) hour's compensation for such meeting after their working hours.

Grievances necessitating immediate action shall be handled during working hours, without loss of pay.

Article VII

Provision Against Limitation on Production

Section 1. There shall be no limit on, or curtailment of, production.

Article VIII

No-Strike, No-Lockout Clause

Section 1. There shall be no lockouts on the part of the employer nor suspension of work nor picketing of the company's plant on the part of the employees. This agreement is a guaranty that there will be neither strikes nor lockouts.

Article IX

Training Program for Apprentices and Others

Section 1. In order that an adequate supply of competent workmen shall be available at all times, it is agreed between the parties hereto that training programs for apprentices and others may be established by the employer, which programs shall be mutually agreed to by the parties hereto.

Article X

Duration of Agreement

In view of the National Emergency proclaimed by the President, all provisions of this agreement shall continue in force and effect for a period of two years and thereafter until such time as either party desiring to modify or terminate same shall give the other party thirty (30) days [fol. 165] notice in writing of its desire to so modify or terminate same; upon such notice having been given and in the event an amended or new agreement is reached, such new or amended agreement shall continue in force there-

after from year to year; provided that should either party desire to modify or terminate same it shall so notify the other party in writing, not less than thirty (30) days prior to the end of any subsequent yearly period; upon receipt of any such notice, negotiations upon the matters contained therein shall begin within ten (10) days; provided, however, that on demand of either party at the end of the first year's operations under this agreement, and on demand of either party every six (6) months thereafter, the wage scales agreed to shall be reviewed and adjusted, if necessary, in accordance with the provisions hereinafter set forth.

Five Per Cent Increase

If, at the end of the first year's operations under this agreement, the level of the cost of living average in the ten cities hereinafter named shall have changed from the level of the cost of living average on the effective date of this agreement by five per cent or more, the wage scales shall be correspondingly adjusted, and said adjustment to be effective commencing with the expiration of the first year's operation under this agreement and such levels to be determined as follows: The report of the Bureau of Labor Statistics of the United States Department of Labor for June 15, 1941, covering the level of the cost of living average in the ten cities hereinafter named shall be considered and used as the level of the cost of living average on the effective date of this agreement; and, the report of the Bureau of Labor Statistics for June 15, 1942, showing the level of the cost of living average in said ten cities, shall be considered and used as the level of the cost of living average at the expiration of the first year's operations under this agreement.

Thereafter, the level of the cost of living average in said ten cities for each succeeding semi-annual review and adjustment date shall be the level reflected by the report of the Bureau of Labor Statistics for December 15, or June 15 of each year whichever is nearest in point of time to such review and adjustment date. Provided, however, that any changes in said levels of the cost of living average shall be calculated from the level applicable to the time of the last wage adjustment, or if there has been no previous wage adjustment than such change in levels shall be cal- [fol. 166] culated from June 15, 1941. Whenever under the

foregoing procedure it is found that the change in the levels prescribed for such calculation if 5% or more, wage scales shall be correspondingly adjusted, said adjudgment to be effective commencing with the date herein specified for such adjustment.

If request for a review shall have been made by either party and the data from the Department of Labor above referred to is not obtainable at the time hereinbefore specified for such review such data may be secured at a later date and the wage adjustment, if any, shall be made effective retroactively to the date specified for such review.

The ten cities in the Gulf Zone to be covered by the foregoing surveys and reports made by the Bureau of Labor Statistics are as follows: Jacksonville, Florida; Tampa, Florida; Mobile, Alabama; Pascagoula, Mississippi; New Orleans, Louisiana; Orange, Texas; Galveston, Texas; Beaumont, Texas; Port Arthur, Texas; and Houston, Texas.

The Cost of Living Index above referred to shall be secured in the same manner and by the same organization within the Bureau of Labor Statistics which now compiles the nationwide index covering "Cost of Goods Purchased by Wage Earners and Salaried Workers in Large Cities". For purposes of this agreement, it is understood that the term "level of cost of living average", means the figure obtained by adding the cost of living index figures of the ten cities above mentioned and dividing that total by ten.

Article XI

Sundays and Holidays

Section 1. All work performed on Sundays and the following holidays shall be paid for the rate of double time at the established wage rate: New Years Day, Memorial Day (April 26) Fourth of July, Armistice Day, Thanksgiving Day, Christmas Day. No work shall be performed on Labor Day unless in an extreme emergency and shall then be compensated at double the established wage rate. If one of the above holidays falls on Sunday, the day recognized by the State or Nation shall be considered the legal holiday.

Article XII

Section 1. When it is necessary to move a new vessel under construction from one berth to another, or into or

[fol. 167] out of the Drydock, such operation if done on Saturday will be a straight time for the temporary employees called in and at time and one-half for the regular yard employees called. Such regular yard employees will be guaranteed a minimum of three (3) hours work in such cases.

Section 2. Employees who are taken from their regular work to make up a crew for sea trial will, while engaged thereon, be paid as follows:

A. Employees will stand watches of four (4) hours and eight (8) hours off. The first eight (8) hours worked during a twenty-four (24) hour period shall be paid at a straight time. All time worked in excess of eight (8) hours in a twenty-four (24) hour period shall be paid for at time and one-half.

Section 3. When a ship returns from trials during a regular yard shift, employees regularly employed on that shift will be guaranteed against loss of pay for such time as they are unable to work on that shift, due to their presence on the vessel.

Section 4. In docking and undocking of a vessel that was commenced prior to completion of the eight (8) hour shift, the crew engaged in said operation shall receive one and one-half (1½) times the established rate for work performed in excess of eight (8) hours; but if Management deems it necessary, a new crew may be called on two and one-half (2½) hours notice to complete work.

Article XIII

Travel Pay

Section 1. Where men are sent on jobs away from the Yard or other regular place of employment where they are regularly employed, they shall receive first class board and lodging and traveling time at straight time to and from such job. If employees travel on overtime days or are required to work overtime, they shall be paid travel pay at the overtime rates specified in this agreement. Not more than eight (8) hours pay for travel time in any one day of twenty-four (24) hours computed from the starting time of the employees regularly assigned shifts shall be paid.

The employer shall provide covered transportation to such employees or pay the regular fares both ways for employees while traveling.

[fol. 168] ARTICLE XIV

Section 1. None but mechanics or apprentices regularly employed as such shall do mechanics work as covered by the jurisdiction of the Unions coming under the provisions of this agreement.

Section 2. The Company, agrees as a general policy in the assignment of work to recognize the right of crafts to perform such work in accordance with established shipyard practice. This, however, shall not be construed as a basis for a Union to claim through technical and arbitrary interpretations hereof, the right to create unnecessary jobs.

Section 3. None but mechanics, learners and apprentices in their respective crafts shall operate oxy-acetylene torches or electric welding apparatus.

Section 4. Where oxy-acetylene torches or other welding processes are used, each craft shall perform the work which was generally recognized as work belonging to that craft prior to the introduction of such processes.

Section 5. Craftsmen and apprentices when working independently will be furnished sufficient competent help when needed to handle the work.

Section 6. Employees using tools and or equipment required by the Company to be turned in to the toolroom daily will be allowed five (5) minutes before quitting time for that purpose.

Section 7. All welders on entering service, after taking the trial test, must within fifteen (15) days after entering service, take the American Bureau of Shipping or B. M. I. N. test.

Section 8. The Company shall provide employees with proper ventilation when working inner-bottoms or tanks, also provide lung respirators for welders when welding galvanized material or when welding in close quarters where respirators may be necessary.

Section 9. No spray work is to be done with any material containing (in excess of 10% lead) any materials specified

by manufacturer not to be sprayed. Respirators, or other proper safeguards must be used by spray gun operators and assistants when in close compartments.

[fol. 169] Section 10. Painters shall procure paints and equipment five (5) minutes before starting time; and shall be allowed five (5) minutes before quitting time to put paints and equipment away.

ARTICLE XV

Section 1. The present practice shall continue whereby the first shift operator of the air compressor plant starts one-half hour before regular shift starting time and continue on duty until one-quarter hour before the second shift starting time thereby remaining on duty for eight and three-quarter (8¾) hours and receive pay for nine and one-half (9½) hours, taking his lunch at his own convenience while on duty. The second shift operator works similarly from one-quarter hour before the first shift stops and remains on duty until the end of the second shift also receiving nine and one-half (9½) hours pay for eight and three-quarters (8¾) hours work.

Section 2. There shall be one or more hostlers employed for the purpose of servicing and cleaning boilers, in all steam cranes and raising steam prior to the commencement of work each day, and said hostler or hostlers shall complete their eight (8) hours per day be oiling and firing.

Section 3. Carpenters apprentices shall furnish and use their own tools.

Section 4. Truck drivers shall assist in loading and unloading at their trucks.

Section 5. Men working at acid vats in galvanizing plants will be furnished with rubber gloves, aprons and boots and shall be required to wear same during working hours. Kettle men will be furnished with asbestos aprons and gloves.

ARTICLE XVI

Section 1. Employees, except maintenance workers, called or required to report and reporting for work shall be paid a minimum of two (2) hours straight time unless conditions beyond the control of the company prevents per-

formance of the work for which such employees were called. Maintenance workers, when called and reporting for work, will receive a minimum of two (2) hours pay regardless of conditions.

[fol. 170] Section 2. Laborers, when used as helpers in excess of one (1) hour, shall receive helpers' rate of pay.

Section 3. Laborers when assigned to help carpenters shall be designated as Carpenter-Laborers and receive helpers rate of pay.

Section 4. Employees working on night shift and desiring work on day shift shall have preference when such vacancies occur (seniority, as herein defined, to govern) provided they so request.

Section 5. When an employee is required to perform the work temporarily, of another employee receiving a higher rate of pay, he shall receive the higher rate, but if required to perform, temporarily, the work of another employee receiving a lower rate, his rate will not be changed.

Section 6. Blacksmiths helpers required to prepare or build coal or coke fires will be paid fifteen (15) minutes at time and one-half for starting fires, such helpers to start fifteen (15) minutes before regular shift starting time. Helpers may start to tear down fires five (5) minutes before quitting time.

Section 7. All men employed in the Electrical Department, other than mechanics, shall be employed as apprentices.

Section 8. Apprentices shall work with, and under the direct supervision of, electricians and shall not be permitted to perform work alone, that is generally recognized as electricians' work.

Section 9. The ratio of apprentices to electricians shall be maintained at approximately one (1) apprentice to each two (2) electricians employed in the department.

Article XVII

Section 1. When new employees are required, the Business Agent of the Craft concerned will be required to send qualified persons to the plant.

Section 2. If the Union's Business Representatives are unable to furnish persons required for employment within

a twenty-four (24) hour period, the Management may employ such workers as may be available, with the understanding that such workers shall be required to file application for membership in their respective Union within a period of fifteen (15) days, if retained by the Company and the membership is acceptable to the Union operating under the terms of this agreement.

[fol. 171] Section 3. The Company agrees to retain in their employ only members of the Union which are or may become parties to this agreement except as otherwise provided herein.

Section 4. Foreman or Assistant Foreman shall not use tools, except in giving instructions in the use of tools or methods of performing work. In departments or shifts employing less than five men, Foreman may perform work.

Section 5. During short periods when work for one particular group within the craft may be delayed, the mechanics and helpers thus unemployed may be distributed temporarily to do work of their craft for which they may be individually adapted in preference to a lay-off, providing such distribution of employees will not cause displacement of employees in other groups. No changes of rates of pay will be involved.

Section 6. Employees of the yard will be given first consideration for promotions when vacancies in higher paid positions are to be filled, or such jobs are created.

Section 7. A mechanic may be promoted to leaderman on a two (2) weeks trial basis; if he proves satisfactory, he will be continued as a leaderman and his promotion with corresponding pay will date from the first day of the trial period, otherwise, he will remain as a mechanic. This shall not be so construed as to create a temporary leaderman's job for two (2) weeks only.

Section 8. The management of the operations and direction of the working forces is vested in the Company. The right of the company is recognized to hire, promote, suspend, discharge or lay off employees for any cause, in accordance with the provisions of this Agreement, so long as such right is not exercised for the purpose of discriminating against an employee because of his membership in the Union or because of Union activities.

Section 9. It is further agreed that leading men are covered by the provisions of this agreement, but that no [fol. 172] interference will be exercised by any Union with respect to the supervisory functions of any leading men: Nevertheless, this is not to be construed as any waiver by any Union releasing any leading man from his personal obligations as a member.

Article XVIII

Seniority

Section 1. When it becomes necessary to lay off employees in any department Seniority of employees established by duration of service shall be recognized as the factor in the selection of employees to be laid off, with the provisions that: It is mutually agreed by the Management and the Union, that exceptional ability and experience may be recognized by the Management as a factor in the selection of employees to be retained. Providing further that in any case where other than time factors are utilized by the Management, any employee who may feel that he has been unjustly selected for layoff shall have the right of appeal as provided for in Article VI. And further provided that any employee who is scheduled for layoff when other than time factors are utilized shall have forty-eight (48) hours notice prior to such lay-off.

Section 2. Employees will lose their seniority for:

First, lay off exceeding one (1) year due to lack of work in the employee's department or other causes beyond the control of the Company.

Second, if the employee fails to return when called back to work after a layoff, within seven (7) days from date of mailing of notice by the Company to the Business Agent.

Third, Absence from accident or sickness, except that an employee absent from the job on account of sickness or accident, who reports such circumstances to the Company and the Committee within three (3) days and monthly hereafter, if necessary, will retain his seniority.

[fol. 173] Fourth, employees who voluntarily quits the service of or are discharged by the Company, except discharged contrary to this contract.

Fifth, Employees who accept employment elsewhere during leave of absence. For the purpose of simplifying the keeping of records and to avoid the acquirement of seniority status by temporary employees, no seniority can be acquired during the first month of any workman's employment. If such employee remains actively in the employ of the Company for as long as one month he will then acquire seniority dating back to the first day of employment.

Section 3. Employees in the service of the Company less than one month, if discharged as being incompetent, shall not be entitled to the provisions of this agreement.

Section 4. In the reduction of forces in any department or yard as a whole, the ratio of apprentices will be maintained.

Section 5. In the restoration of forces following a lay-off all former employees shall be reinstated by departments in accordance with their seniority standing before new employees are hired. This is to be determined by representatives of the Company and the Union committee and/or business representatives.

Section 6. Employees will not be laid off to equalize time for any cause.

Section 7. Employees promoted to mechanics, their seniority as mechanics will date from the date such promotion is effective.

Section 8. The Company will in no way discriminate against any committeemen for presenting a grievance, or any employee who from time to time represents other employees. No employee is to carry on Union or other personal activities during working hours.

Article XIX

Boilermakers

Section 1. In the reduction of forces in the Boilermakers trade, seniority shall be determined in each of the following groups of employees:

[fol. 174] Loftsmen and Shipfitters
Riveters
Shippers and Caulkers

Riggers
Welders
Burners
Cold Press Operators
Punch and Shear Operators
Reamers and Drillers
Planermen
Roll Operators
Anglesmiths
Bending Slab Men
Erectors
Bolters
Rivet Testers
Grinders

In the reduction of helpers, the youngest helper in point of service will be laid off according to seniority, regardless of the department which he has been assigned to work (except loftsmen and slab fire helpers).

Article XX

Learners

Section 1. Helpers who have been rendered satisfactory for a period of not less than six months shall become learners upon designation and selection by the management. Helpers who have demonstrated exceptional ability, in the opinion of management, may be promoted to learners, in less than six months. Promotion to learners to be approved by Chairman of Craft Committee.

[fol. 175] Section 2. Learners may be employed on actual ship construction in all departments.

Section 3. The normal ratio of learners in any department shall not exceed One (1) to ten (10) of the mechanics employed in that department.

Section 4. If within six (6) months such advanced helper shows no adaptability to learn the trade, he will be removed as a learner and will be retained in the service as a helper with all seniority rights as a helper.

Section 5. If neither the Business Agent nor the Company can obtain mechanics within forty-eight (48) hours, the normal ratio of learners will be waived, and the Com-

pany may promote qualified helpers to the position of learner, or employ men sent by the Union for the purpose, in number equal to the number of mechanics asked for and not obtained.

Section 6. If within thirty (30) days from date of advancement of learners appointed under Section (5) the Union has mechanics available, to fill the original order, such mechanics will be given employment and the learners appointed will be re-rated as helpers according to seniority, otherwise, the original order for mechanics will be considered as cancelled.

Section 7. Rate of pay for learners shall be:

For the first six (6) months 18 cents per hour less than mechanics rate.

For the second six (6) months 13 cents per hour less than mechanics rate.

For the third six (6) months 8 cents per hour less than mechanics rate.

For the last six (6) months of the two (2) year period to which learners are limited, three cents (3) per hour less than mechanics. Upon completion of this period they shall receive mechanics rate of pay.

Section 8. Nothing herein contained shall be construed to prevent the Company to advance learners to a mechanic's position in less than the two (2) year period above mentioned, upon notification to the Union involved.

Section 9. In reduction of forces in any department employing learners, the normal ratio shall be restored by laying off learners before mechanics are laid off, and maintained thereafter until conditions similar to Section (5) are again encountered.

Article XXI

Apprentices

Section 1. Apprentices may be employed at the ratio of one (1) for each department and not to exceed one (1) for [fol. 176] every five (5) mechanics of each craft employed in the department, and at the expiration of their apprenticeship shall receive the established rate of wages for mechanics, except as otherwise provided herein.

Section 2. There may be two (2) classes of apprentices; regular and helper apprentices, in each of the crafts covered by this agreement. All apprentices must be able to speak, read and write the English language and understand at least the first four (4) rules of arithmetic.

Section 3. Applicants for regular apprentices shall be between 17 and 21 years of age, and if accepted, shall serve approximately 8000 working hours.

Section 4. Apprentices must be indentured and shall be furnished with a duplicate of the indenture by the Company. The Company and the Unions will cooperate in working out a suitable apprentice training program to give apprentices all round training by actual production work in all branc-es of the trade, so for as practicable.

Section 5. In case of suspension of work in any department at any time the wages of the apprentice shall cease during such suspension. If within six (6) months an apprentice shows no aptitude to learn the trade he will not be retained as an apprentice.

Section 6. Apprentices shall not be dismissed or leave the service of their own accord except for just and sufficient cause, before completing their apprenticeship.

Section 7. Regular apprentices in their first two years of apprenticeship, and helper apprentices in their first year, shall work under the direct supervision of a standard mechanic. During this period, two apprentices will not be worked as partners.

Section 8. Fifty per cent (50%) of the apprentices may consist of helpers who have had not less than one (1) year's experience as a helper in the employ of the Company at the time application for apprenticeship is made.

Section 9. Helper apprentices shall be between the ages of 21 and 35 years of age and shall serve 6,000 working [fol. 177] hours. The helper apprentices shall be governed by the same rules as the regular apprentices.

Regular Apprentices Rate of Pay

1st 1,000 hours, 54¢ per hour	.63
2nd 1,000 hours, 59¢ per hour	.68

3rd 1,000 hours, 64¢ per hour	.73
4th 1,000 hours, 69¢ per hour	.78
5th 1,000 hours, 74¢ per hour	.84
6th 1,000 hours, 79¢ per hour	.89
7th 1,000 hours, 84¢ per hour	.95
8th 1,000 hours, 89¢ per hour	1.00

Helper Apprentices Rate of Pay

1st 1,000 hours, 66¢ per hour	.75
2nd 1,000 hours, 71¢ per hour	.81
3rd 1,000 hours, 76¢ per hour	.86
4th 1,000 hours, 81¢ per hour	.92
5th 1,000 hours, 86¢ per hour	.97
6th 1,000 hours, 91¢ per hour	1.04

Article XXII

Safety and First Aid

Section 1. The Company and the Union Committee will agree upon such toilet, shower, locker, drinking water, and safety facilities as will not work a hardship on either Company or the employees.

Section 2. A First Aid Department shall be maintained, the head of which must be a graduate nurse.

Article XXIII

Section 1. Wages shall be paid weekly. Any employee laid off, discharge-, or ceasing to work on his own volition, shall receive his wages and personal property within one work- day, on termination of said employment.

Section 2. The following minimum basic wage rates shall prevail for the duration of this Agreement, except as otherwise provided for in this Agreement:

Anglesmiths	1.15	1.28
Boilermakers	1.07	1.20
Burners	1.07	1.20
Bar Furnacemen	1.15	1.28
Bolter-up Hand and Power	.95	1.07
[fol. 178] Cold Pressmen	1.07	1.20
Chippers and Caulkers	1.07	1.20
Drill Pressmen	.95	1.07

Drillers and Reamers	.95	1.07
Erectors	.95	1.07
Grinders (Plate)	.95	1.07
Holder-on	.71	.81
Joggler Machine Operator	.95	1.07
Loftsmen	1.28	1.41
Layerout (Ship)	1.07	1.20
Plate Furnacemen	1.25	1.38
Punch and Shear Operator	.95	1.07
Patternmakers	1.28	1.41
Planer Operator	1.07	1.20
Riveters	1.07	1.20
Rivet Testers	1.07	1.20
Rivet Heaters	.71	.81
Roll Operator	1.07	1.20
Riggers	1.07	1.20
Slab Helpers	.71	.81
Shipfitters	1.07	1.20
Tank Testers	1.07	1.20
Welders	1.07	1.20
Welders (Galvanized)	1.12	1.25
Welders (required by Company to pass B. M. I. N. Test)	1.12	1.25
Machine Shop		
Bolt Threading Machine	.95	1.07
Centering Machine	.95	1.07
Drill Press Operator (not to include boring and Facing)	.95	1.07
Hack Saw (Power)	.95	1.07
Nut Tapping Machine	.95	1.07
Pipe Threading Machine (It is mutually Agreed that men working in this Classification may operate any of the above machines)	.95	1.07
Blacksmiths	1.07	1.20
Blacksmiths (Heavy)	1.15	1.28
[fol. 179] Coppersmiths	1.07	1.20
Carpenters	1.07	1.20
Caulkers (Wood)	1.07	1.20
Compressor Operator	1.07	1.20
Crane Assistants (Firemen, Oilers Groundsmen, Hostlers)	.83	.94
Dinky Operators	.87	.98

Electricians	1.07	1.20
Gantry Crane Operators	1.15	1.28
Galvanizers	1.07	1.20
Joiners	1.07	1.20
Locomotive Crane Operators	1.07	1.20
Machinists	1.07	1.20
Mechanics (Structural Shop)	.95	1.07
Pipe Fitters	1.07	1.20
Painters	1.07	1.20
Painters, Spray	1.12	1.20
Shipwrights	1.07	1.20
Saw Filers	1.07	1.20
Stationary Engineers	1.07	1.20
Shop Crane Operators	.97	1.09
Sheet Metal Workers	1.07	1.20
Leadingmen 10¢ per hour above Mechanics' basic rate of pay		
Helpers, less than 6 months' experience	.57	.66
Helpers, 6 months' or more experience	.66	.75
Lock Laborers	.60	.69
Laborers	.54	.63
Truck Drivers	*[.75	.85]
Tractor Drivers	*[.66	.75]
Warehouseman	*[.57	.66]
[fol. 180] Truck Drivers—Under one and one-half tons, automobiles and station wagons (exclusive of Power Scooters, first aid ambulances and squad cars) (Manufacturing rate)		.75
Truck Drivers—1½ Tons to 5 tons inclusive (Manufacturing rate)		.85
Druck Drivers—Over 5 tons, including winch, etc. (Manufacturing rate)		.97
Warehouseman B		.66
Warehouseman A		.75

ARTICLE XXIV

Section 1. The following employees are not covered by the provisions of this agreement:

Administrative Officials and their assistants, Superintendents and Assistant Superintendents, Department Fore-

* Figures struck out.

men and Assistant Foremen, Department Heads, Such as Chief Engineer, Naval Architect, chief Draftsman, General Storekeeper, Plant Engineer, etc., and their assistants. Watchman and Guards, Chief Planner, Chief Scheduler, Cost Department Supervisor, Chief Accountant, Payroll Supervisor, Chief Estimater, and the Assistant of each, and All employees in Personnel Department.

Section 2. Each official of the Company and each other executive whose work is of confidential nature, shall be entitled to one private or confidential secretary who shall not be a member of the Union.

Article XXV

Office Workers

Section 1. The Company agrees in the case of new positions to promote those employees who in their opinion are qualified from past experience to fill such position. This shall not be construed to prevent the Company from employing any other person if in its judgment there is no qualified employee to take such position.

Section 2. The following general classifications shall prevail for clerical workers and the minimum weekly rate of pay shall be as follows:

		Weekly	
Accounting Clerks	$24.00	$27.00	$30.00
Bookkeepers	30.00	33.00	40.00
Comptometer Operators	23.00	25.00	
Checkers	24.00	27.00	30.00
[fol. 181] Cost Department Clerks	24.00	27.00	30.00
Follow Up Clerks (Material of Progress)	31.00		
First Aid Director	40.00		
First Aid Assistants (2)	24.00	27.00	30.00
General Office Clerks	24.00	27.00	30.00
Head Checker	55.00		
Head Timekeeper	35.00		
Office Boys or Runners	16.50		
Piece Work Checkers	24.00	27.00	30.00
Purchasing Department Clerks	24.00	27.00	30.00
Payroll Clerks	24.00	27.00	30.00
Planning and Scheduling Clerks	24.00	27.00	30.00

	Weekly		
Personnel Department Clerks	24.00	27.00	30.00
Receiving Clerks	24.00	27.00	30.00
Safety Men	31.00		
Store Room and Store Clerks	24.00	27.00	30.00
Stenographers	22.00	24.00	
Timekeeping Clerks and Timekeepers	24.00	27.00	30.00
Typists	20.00	22.00	
Telephone Operators	20.00	22.00	
Warehouse: General Clerks	24.00	27.00	30.00
Yard and Production Clerks	24.00	27.00	30.00

Office Workers

Accountants (C)	$.95
Accountants (B)	1.05
Accountants (A)	1.20
Chief Mail and File Clerk	1.10
Progress Men (B)	1.00
Progress Men (A)	1.10
Tabulating Machine Operator	
Senior (C)	.95
Senior (B)	1.05
Senior (A)	1.20
Junior (C)	.75
Junior (B)	.85
Junior (A)	.90
Key Punch Operator (B)	.69
Key Punch Operator (A)	.75
Office Machine Operator Calculator, Comptometer, Addressograph, etc. (B)	.69
Addressograph, etc. (A)	.75
Secretaries	
To Executives	1.00
Secretaries	.95
Stenographer (B)	.75
Stenographer (A)	.85
Typists (B)	.69
Typists (A)	.75
Clerks (C)	.75
Clerks (B)	.85
Clerks (A)	.95
First Aid Attendants (C)	.75

First Aid Attendants (B)	.85
First Aid Attendants (A)	.95
Nurses (Graduate) (B)	.78
Nurses (Graduate) (A)	.85
Telephone Operators	
Chief	.85
Operator (B)	.70
Operator (A)	.75
Messengers	.52
Expeditors Senior	.98½
Expeditors Asst.	.92
Expeditors Junior	.85

The first column will apply during the first six months of an employee's continuous service, the second-column rate will apply during a period of from six months' to twelve months' continuous service, and the third-column rate will apply during a period in excess of twelve months continuous service for all employees except stenographers, typists and telephone operators who shall receive the first-column rate during their first year of continuous service, and the second-column rate for all service in excess of one year.

Article XXVI

Mechanical Men and Draftsmen

Section 1. The following general classification shall prevail for technical men and draftsmen and the minimum hourly rates of pay shall be as follows:

[fol. 182] Office Clerks and Learners	.63	.72
Assistant Blue Print Operator	.75	.85
Tracers	.75	.85
Blueprint Operators	.90	1.02
Junior Specification Writer	.90	1.02
Junior Draftsman	1.00	1.13
Senior Specification Writer	1.25	1.38
Draftsman	1.25	1.38
Senior Draftsman and Checker	1.50	1.63
Squad Leader	1.63	1.76
Senior Squad Leader	1.75	1.88

Office Clerks and Learners

Folding and filing drawings and tracings, helping on blueprints, running errands and performing simple office

tasks. Learners may be put on drafting boards for the purpose of ascertaining their ability to become tracers, with the understanding that they shall be classed as tracers and be paid the rate of tracers if in the opinion of the division head their work is satisfactory after a thirty (30) day trial period.

Tracers

Tracers may be promoted from the class of learners, or they may be hired from the outside. They shall show satisfactory evidence of good tracing experience.

Junior Specification Writers

They assist in writing Specifications under direct supervision and must be able to make simple sketches and read blueprints.

Junior Draftsmen

They shall be able to make minor drawings, sketches, develop details from sketches and instructions under direct supervision and be able to do tracing work as required.

Draftsmen

They develop plans under direct supervision, correct or alter existing plans and must be able to perform simple calculations. They should have at least two years of professional experience.

[fol. 183] Senior Specification Writer

They shall write Specifications under direct supervision as directed, prepare sketches as needed in their work. They must be able to perform the same type of work as draftsmen, if conditions demand it, and if no specification work is available. They should have at least two years of professional experience either in writing of specifications or in engineering and drafting work.

Senior Draftsmen

They develop plans or designs under general supervision and perform calculations and shall assist Draftsmen and Junior Draftsmen in their work. They shall be capable to develop plans from specifications, under general super-

vision, and shall be able to perform engineering calculations of the advanced type. They should have at least four years of professional experience and at least two years of engineering schooling, or its equivalent. They shall be capable of acting as checkers if the need arises.

Checkers

Checkers shall have the same status as Senior Draftsmen and shall perform Senior Draftsmen's work when no checking can be done. They shall have the same experience as Senior Draftsmen or equal and are required to check engineering calculations, aside from checking drawings.

Squad Leader

Squad leaders shall work out the principle of design as directed and supervise the work of one or more men, under general supervision. They shall have at least five years of experience in general engineering work, be capable to perform engineering calculations, interpret specifications and develop from specifications new design, and shall develop specifications for new or old designs.

Senior Squad Leader

Senior Squad Leaders have direct supervisions over several squads or single individuals on all engineering work. They shall prepare or supervise the preparation of specifications or the development of new designs from specifications, contracts or other instructions. They shall make or [fol. 184] supervise the making of studies or calculations in connection with the development, design and construction of machinery and equipment, supervise and conduct tests, analyze designs and proposals, and in general perform all such duties which are necessary to properly and efficiently prosecute advanced engineering practice.

They shall have at least six years of consecutive professional experience and shall be engineering graduates of a college or university of recognized standing, or an equivalent of not less than eight years consecutive professional experience.

Section 2. Promotions into the higher brackets and the selection or the engagement of leaders is exercised at the discretion of the management.

Section 3.

Planning Department Clerk or Learner	.63	.72
Office Clerk	.75	.85
Order Supervisors	1.50	1.63
Senior Order Man	1.25	1.38
Order Man	1.00	1.13
Junior Order Man or Learner	.75	.85
Planners (only while on this job)	1.12	1.25
Schedule Man	1.25	1.38
Schedule Man Learner	.75	.85
Estimators	1.25	1.38
Estimator Learner	$1.02	
Junior Estimator	1.12	
Estimator	1.38	
Senior Estimator	1.63	
Order Man Learner	1.02	
Jr. Order Man	1.12	
Order Man	1.38	
Sr. Order Man	1.63	
Schedule Man Learner	.85	
Jr. Schedule Man	1.12	
[fol. 185] Schedule Man	1.38	
Rodman	.85	
Instrument Man	1.12	
Sr. Instrumentman	1.38	

Planners:

First Six Months	1.25
Second Six Months	1.30
Third Six Months	1.35
Fourth Six Months	1.42

Planning Department Clerk or Learner

Folding or filing tracings, assist in obtaining technical data for reports and other simple office tasks in assisting the other men who actually compile the reports.

Office Clerk

Same as above but must be able to compile technical reports.

Order Supervisors

Must be capable of reading plans and taking off material and making shop bills of material; must also be capable of making simple sketches and direct and assist others in this work and plan the procedure of ordering the material.

Senior Order Man

Same as above except he will work under squad leader.

Order Man

Take off material from drawing and make bills of material under direction.

Junior Order Man or Learner

Assist in making bills of materials from directions given, and assist the order man.

Planners

Planners are all to be tradesmen loaned from the several yard departments, such as shipfitters, pipe fitters, electricians, etc. They will be capable of planning and routing work and estimating man hours in their trades.

[fol. 186] Schedule Man

To develop plans and schedule of work performed. He will be under the direction of the Manager of Planning and estimating Department.

Schedule Learner

Assist in the above work under direction.

Estimators

Must be able to produce complete estimating of man hours and material costs from type planned, specifications or written instructions. Must also work up data to place in file for future reference.

ARTICLE XXVII

Section 1. Recognizing the fact that it is not possible for agreements of this kind to cover every contingency that

may arise, all parties hereto, in conference, may make any mutually acceptable adjustment which appears desirable to meet changing conditions.

(Signed:) Joseph S. McDonagh, Metal Trades Department, American Federation of Labor; Geo. B. Howell, Tampa Shipbuilding Company, Incorporated; H. F. Ellis, International Association of Machinists; E. V. Porter, International Brotherhood of Electrical Workers; J. F. Schmitt, M. J. Wagner, International Brotherhood of Boilermakers, Iron Shipbuilders, Welders and Helpers of America; Glenn McClung, John M. Greene, Int'l. Rep., International Union of Operating Engineers; Landon L. Tanner, International Association of Sheet Metal Workers; Chas. Bradford, Jr., G. W. Simons, Richard P. Walsh, J. P. M., United Association of Journeymen Plumbers and Steamfitters of America and Canada; Otis H. Zirk, United Brotherhood of Carpenters and Joiners of Amer- [fol. 187] ica; R. O. Smith, International Brotherhood of Painters and Decorators; H. L. Sander, International Hod Carriers, Building and Common Laborers; R. F. Roberts, International Brotherhood of Blacksmiths, Drop Forgers, and Helpers of America; R. T. Richey, International Association of Bridge and Structural Iron Workers of America; H. L. Sander, Publicity News Writer & Office Workers; W. E. Sullivan, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Matt W. Ballentine, International Federation of Technical Engineers, Architects and Draftsmen's Union.

Trainees
All Crafts.

.66—.75—.88 with automatic setup from one rate to the other each 3 months with agreement to set up prior to automatic time if qualifications justify.

Anglesmith and Bar Furnacemen

Learners (Beginners)	$1.10
After six months	1.15
After twelve months	1.20
After eight months	1.25

Pattern Shop & Mold Loft	
Helper (Beginner)	$ .66
Helper (six months)	.75
Learner	1.02
Learner	1.11
Learner	1.20
Learner	1.30
Loftsman or Patternmaker	1.41
Leadingman	1.63
Heavy Steam Hammer Operator	1.00

[fol. 188] [Clerk's Certificate to foregoing paper omitted in printing.]

[fol. 189] On the 24th day of May 1945, Information In Quo Warranto was filed in evidence in the following words and figures to-wit:

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

24000-L

STATE OF FLORIDA, ex Rel., J. TOM WATSON, as Attorney General of Said State, Relator,

vs.

A. SANTAELLA & CO., INC., a Florida Corporation, SALVADOR RODRIGUEZ, INC., a Florida Corporation, Corral-Wodiska Y CA., a Florida Corporation, J. W. Roberts & Son, Inc., a Florida Corporation, Cuesta, Rey and Company, a Florida Corporation, Gradiaz, Annis & Co., Inc., a Florida Corporation, Morgan Cigar Company, Inc., a Washington Corporation, and Jose Arango & Company, an Illinois Corporation, Respondents

INFORMATION IN QUO WARRANTO—Filed February 16, 1945

Comes now J. Tom Watson, as Attorney General of the State of Florida, and the relator herein, who sues for and in behalf of the State of Florida and the people thereof, and, for said State and the people thereof, gives this Honorable Court to understand and be informed as follows:

1

The respondents, A. Santaella & Co., Inc., Salvador Rodriguez, Inc., Corral-Wodiska Y Ca., J. W. Roberts & Son, Inc., Cuesta, Rey and Company and Gradiaz, Annis & Co., Inc., are, and were at all times hereinafter mentioned, corporations organized and existing under and by virtue of the general corporate laws of the State of Florida.

[fol. 190] 2

That the respondent, Morgan Cigar Company, Inc., is, and was at all times hereinafter mentioned, a corporation organized and existing under the general corporate laws of the State of Washington. That on or about July 8, 1937, the said respondent duly obtained from the Secretary of State of Florida a permit authorizing and permitting it to transact business in the State of Florida for the objects and purposes, and with the rights, powers and privileges contained in and provided by its articles of incorporation, when not contrary to the Laws of the State of Florida.

3

That the respondent, Jose Arango & Company, is and was at all times hereinafter set out, a corporation organized and existing under the general corporate laws of the State of Illinois, That on or about July 19, 1937 the said respondent duly obtained from the Secretary of State of Florida a permit authorizing and permitting it to transact business in the State of Florida for the objects and purposes, and with the rights, powers and privileges contained in and provided by its articles of incorporation, when not contrary to the Laws of the State of Florida.

4

That the respondents herein were organized and incorporated for the purpose of carrying on the business of manufacturing cigars, and for other and further purposes, as are mentioned in the respective articles of incorporation of the respondents, A. Santaella & Co., Inc., Salvador Rodriguez, Inc., Corral-Wodiska Y Ca., J. W. Roberts & Son, Inc., Cuesta, Rey and Company, and Gradiaz, Annis & Co., Inc., and in duly authenticated copies of the respective articles of incorporation of the respondents, Morgan Cigar

[fol. 191] Company, Inc. and Jose Arango & Company, on file in the office of the Secretary of State of the State of Florida, in the Capitol Building, in Tallahassee, Florida; and that all of the respondents are now engaged in carrying on such business of manufacturing cigars at or near the City of Tampa, in Hillsborough County, Florida.

5

That each of the respondents, A. Santaella & Co., Inc., Salvador Rodriguez, Inc., Corral-Wodiska Y Ca., J. W. Roberts & Son, Inc., Cuesta, Rey and Company, and Gradiaz, Annis & Co., Inc., in and by its acceptance of the articles of incorporation aforesaid and by its qualification as a Florida corporation with the Secretary of State of the State of Florida, and each of the respondents, Morgan Cigar Company, Inc. and Jose Arange & Company, in and by obtaining and accepting its above mentioned permit to transact business in the State of Florida, consented and agreed with the State of Florida and the people thereof, or obligated itself to:

(a) Use and exercise only such powers and franchises as are expressly and impliedly conferred upon it by its charter and the Constitution, statutes and laws of the State of Florida;

(b) Refrain from exercising or attempting to exercise any powers or franchises denied to it, or not conferred upon it, by the Constitution, statutes and laws of the State of Florida;

(c) Refrain from entering into contracts or agreements not within its express or implied powers and franchises, or in violation of the Constitution, statutes and laws of the State of Florida; or, that are otherwise ultra vires, or contrary to the public policy of this state;

(d) Refrain from taking any action or doing or performing anything in violation of, or contrary to, any of the laws of this state.

6

That the respondents and certain unincorporated cigar manufacturing concerns are, and have been since prior to [fol. 192] the making of the contract hereinafter mentioned,

organized into an association under the name of the Cigar Manufacturers Association of Tampa.

That, on or about October 14, 1941, said Cigar Manufacturers Association of Tampa, acting for its members, made and entered into a contract with the Cigar Makers' International Union of America, affiliated with the American Federation of Labor and the following named Unions of Tampa, Florida, to-wit:

Local Union No. 336
Local Union No. 462
Local Union No. 474
Local Union No. 493
Local Union No. 494
Local Union No. 495
Local Union No. 500
Local Union No. 512

That the respondents also executed said contract as evidence of their assent thereto, and, by so doing, agreed to abide by the terms thereof.

That said above named local unions also executed said contract.

That a true copy of said contract, with the signatures of the contracting parties omitted, is attached hereto as Exhibit "A" and is hereby made a part hereof.

7

That in and by said contract the respondents specifically contracted and agreed with the above mentioned labor unions and organizations as follows:

"ARTICLE 11

Terms of Employment

"Section 1. The employer further agrees to employ only members in good standing of the Cigar Makers' International Union of America as cigarmakers, pickers and packers, Strippers, cigar machine operators, semi-machine operators, selectors, and clerks, trimmers, banders, cellophaners and mechanics, machine attendants, and all other productive employees; foremen in all capacities shall not be considered productive employees except as provided in separate agreements with the separate departments. It is further understood

and agreed that janitors, watchmen and office employees shall be exempt from the provisions of this section. [fol. 193] "A member in good standing is one fully paid up in dues and assessments and who carries a membership card showing this standing in his or her respective local union."

That said contract contained a provision stating that it should ~~be in~~ effect until June 30, 1943.

That, prior to said expiration date, the parties to said contract entered into an agreement continuing said contract in effect until a new contract shall have been entered into between said parties. That no such new contract has yet been entered into.

9

That the legislature of Florida, at its 29th regular session, in 1943, by house joint resolution number thirteen, submitted the hereinafter quoted amendment of Section 12 of the Declaration of Rights of the Constitution of Florida to the people of Florida, which proposed amendment was adopted by the people of Florida at the general election of 1944. The said section of the Declaration of Rights, as amended, is as follows:

> Section 12. No persons shall be subject to be twice put in jeopardy for the same offense, nor compelled in any original case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken without just compensation. *The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union, or labor organization:* provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer. (Italics supplied.)

10

That the respondents and their agents, officers and directors are complying with and abiding by the terms, requirements, conditions and specifications in said contract contained, under the continuation agreement aforesaid not-

withstanding the adoption of said amendment of Section 12 of the Declaration of Rights of the Constitution of Florida, and, by so doing, are:

[fol. 194] (a) Denying or abridging the right of the people of Florida to work, on account of membership or nonmembership in a labor union or organization, and are, thereby, violating the organic laws of this state.

(b) Illegally agreeing between themselves, to prevent qualified persons in Florida from obtaining or procuring work on account of membership or nonmembership in a labor union or organization.

11

That, by virtue of the adoption of said constitutional amendment the above quoted portion of said contract, in so far as it relates to and provides for a closed shop, has become and is illegal, without force or effect, in violation of the laws and Constitution of the State of Florida and outside of any warrant, charter, grant or permit to the respective respondents. That, nevertheless, by complying with and abiding by the above quoted terms, requirements, conditions and specifications of said contract, the respondents have usurped and do still usurp the franchise, privilege or liberty of performing the above quoted portion of said contract, against the State of Florida and the people thereof to their damage and prejudice and against the peace and dignity of the said State of Florida and the people thereof.

12

That on or about January 29, 1944, the parties to the above mentioned contract, in contemplation of entering into a new contract, made an agreement providing for the inclusion of certain specified terms and conditions in such new contract, when entered into, one of such terms being that the union security clause quoted in paragraph 7 of this information shall be incorporated in such new contract.

That the relator is informed and believes and therefore alleges that said parties, including the respondents, have nearly completed negotiations and arbitrations leading up to the execution of a new contract between them and will execute such new contract within a short time; and that it is the purpose and intention of the respondents to execute

such new contract with said unions and, in and by the same, [fol. 195] to make the same agreement respecting union security as is quoted in paragraph 7 of this information.

That the respondents will make said agreement respecting union security unless restrained from so doing, and, by so agreeing, will:

(a) Deny or abridge the right of the people of Florida to work, on account of membership or nonmembership in a labor union or organization, and will thereby violate the organic laws of Florida.

(b) Illegally agree to prevent qualified persons in Florida from obtaining or procuring work on account of membership or nonmembership in a labor union or organization.

13

That, by virtue of the adoption of said constitutional amendment, if said union security clause should be incorporated in the new contract which the respondents propose to enter into with said unions, said clause would be illegal, without force and effect, in violation of the laws and Constitution of the State of Florida, and outside of any warrant, charter, grant or permit to the respective respondents, and would be a usurpation of franchise, privilege or liberty against the State of Florida, and the people thereof to their damage and prejudice, and against the peace and dignity of the said State of Florida and the people thereof. That it is necessary and proper to the complete exercise of the Court's jurisdiction that the Court issue its writ restraining the respondents from entering into any new contract with said unions which shall contain said union security clause or any other union security clause which would deny or abridge the right to work on account of membership or nonmembership in any labor union or organization, pending final disposition of this clause.

14

That the relator would not oppose the granting of application for intervention in this cause by the labor unions named in this information, subject to the laws and rules [fol. 196] applicable in the case of intervening parties and strictly as intervenors, and, further, that this relator will request the National War Labor Board to participate in

this proceeding as Amicus Curiae or in such other capacity as to it may seem most appropriate.

The relator believes that whatever order is made by your Honorable Court in this cause should be made in appropriate recognition of the war powers of said War Labor Board with respect to its emergency control over industry involved in war production, without admitting, however, that the defendants are engaged in war production, but that the War Labor Board's responsibility and authority under its war powers is to be distinguished from the legal question presented by this information, and the relator avers that such distinction can best be kept properly defined through the instrumentality and agency of this appropriate participation by said War Labor Board herein, but this relator avers also that the power of such War Labor Board is not subject to being capitalized upon by the defendant or any labor union so that contractual rights may be claimed thereunder by either party in violation of State constitutional inhibitions

Whereon the said Attorney General, for and in behalf of the said State and the people thereof, further prays that the Court will issue its writ, under authority of Section 11 of Article 5 of the Constitution of Florida, restraining the respondents from entering into any new contract with said labor unions which shall contain a union security clause such as is quoted in paragraph 7 of this information or any other union security clause which would deny or abridge the right to work on account of membership or nonmembership in any labor union or labor organization, pending final disposition of this cause.

[fol. 197] And the said Attorney General of the State of Florida, for and in behalf of the said State and the people thereof, prays the advice of this Court in the premises and that due process of law issue against the said respondents, A. Santaella & Co., Inc., Salvador Rodriguez, Inc., Corral-Wodiska Y Ca, J. W. Roberts & Son, Inc., Cuesta, Rey and Company, Gradiaz, Annis & Co., Inc., Morgan Cigar Company, Inc. and Jose Arango & Company, in this behalf, and that the court will declare that the said respondents are unlawfully usurping, exercising and enjoying their respective corporate franchises, privileges, rights and permits, by doing business under and with the aid of the complained of portions, hereinabove set forth, in their existing

contract aforesaid, contrary to the law, and that they be ousted from the continuation thereof, subject to any suspension of such ouster made necessary by the exercise of any power vested by law in the National War Labor Board.

J. Tom Watson, as Attorney General of the State of Florida.

EXHIBIT "A" TO INFORMATION

This Agreement made at Tampa, Florida, this 14th day of OK October
OK) September, 1941, by and between the Cigar Manufacturers Association of Tampa for its membership or who may later become members, who through their attached signatures have instructed the officers of said Association to execute same and agree to abide by same, Party of the First Part, and the Cigar Makers' International Union of America, affiliated with the American Federation of Labor and the several Unions of Tampa, by the signatures of their duly accredited officers, members of and affiliated with said Cigar Makers' International Union of America, Party of the Second Part.

[fol. 198] Party of the First Part is herewith designated as the Employer and Party of the Second Part is herewith designated as the Union.

It is understood and agreed that the Union represents and is empowered to sign this contract on behalf of cigarmakers, selectors, packers and pickers, cigar machine operators, strippers, clerks, banders, trimmers, cellophaners, semimachine operators, mechanics, machine attendants and all other productive employees who are members of or who may later become members of Local Unions Nos. 336, 462, 474, 493, 494, 495, 500, 512 and any other local unions that may be formed during the life of this agreement and are represented by the Union as covered by this agreement for said Union.

Witnesseth:

That the parties, in consideration of the principles of collective bargaining as means of eliminating unnecessary strikes, lockouts, boycotts and for the stabilization of employment through closer cooperation between the Cigar Manufacturers and the Cigar Makers' International Union

of America, in accordance with the provisions of the National Labor Relations Act as construed and determined by the Supreme Court of the United States, copy of which Act is herewith attached as construed as of this date and further, that any amendments, decisions of the Supreme Court or other clarifications of this Act from such Supreme Court shall be and are considered part of this agreement, promise and agree that;

ARTICLE I

Union Recognition

Section 1. The Employer agrees to recognize the Cigar Makers' International Union of America as the sole bargaining agency of his employees, except foremen in all capacities, janitors, watchmen, office employees and executives.

[fol. 199]

ARTICLE II

Terms of Employment

Section 1. The Employer further agrees to employ only members in good standing of the Cigar Makers' International Union of America as cigarmakers, pickers, and packers, strippers, cigar machine operators, semi-machine operators, selectors, and clerks, trimmers, banders, cellophaners and mechanics, machine attendants, and all other productive employees; foremen in all capacities shall not be considered productive employees except as provided in separate agreements with the separate departments. It is further understood and agreed that janitors, watchmen and office employees shall be exempt from the provisions of this section. A member in good standing is one fully paid up in dues and assessments and who carries a membership card showing this standing in his or her respective local union.

Section 2. It being further understood and agreed that the Employer shall decide at all times as to the ability and efficiency of the workers to be employed or retained in his employment, but at no time shall the employer deny the right of the Joint Advisory Board to investigate a case or cases when it has reason to believe that a possible discrimination exists on account of Union activities.

The Employer agrees, before discharging a regular employee who has been on the job four or more weeks, on account of any inefficiency in his work, that he will give such employee written notice thereof in such employee's pay envelope, copy of which notice will be put in a sealed envelope addressed to the Joint Advisory Board of the Union and delivered to the Shop Collector on pay day, to be delivered to the Joint Advisory Board, and if such inefficiency is not cured by the following pay day such employee shall be subject to discharge on that day. If the employee is not discharged on the day specified it will be considered that the employee has cured the inefficiency complaint of and such employee shall not be subject to discharge thereafter on account of any such inefficiency without a like prior notice.

[fol. 200] Section 3. It is agreed that if the Employer is unable to obtain a sufficient number of efficient and competent Union workers for all departments and systems, that the Employer shall by written notice to the Joint Advisory Board then call upon the Union to furnish same, and if the Union does not furnish same within forty-eight (48) hours, the Employer may then hire non-members of the Union as hereinafter provided for. It is understood and agreed, however, that the right of the employer to hire non-members of the Union, as hereinabove provided in this Section, may not be exercised by the employer in any department or departments or systems where the employees are limited by part-time work restrictions.

Section 4. Newly engaged, non-member employees shall be recorded with the Union as on trial for a period of two weeks, after which time they shall be considered as regular employees and to be governed thereafter by the terms of this Agreement.

Section 5. It is understood and agreed between both parties that apprentices shall be permitted in all departments of the Employer, and that the rules and regulations and wage scales pertaining to all apprentices, shall be as provided in the separate agreements with the separate departments and shall remain in force and effect during the life of this Contract.

Article III

Employee Representation

Section 1. The Union shall have the right during the life of this Agreement to be represented by a Joint Advisory Board, composed — workers elected by the local unions heretofore enumerated, and a shop collector who shall be elected, outside the factory premises, by the workers of each shop.

Section 2. It is understood and agreed that the shop collector shall be furnished with a table and a chair in the main entrance of the factory at a mutually agreed upon place, and shall be permitted to collect the dues of the membership of the Union during regular hours of business operation at the table provided for him as specified. The employer, upon hiring a new employee shall require the employee to deliver to him his Union Book, and the Employer shall on the same day deliver said Union book to the shop collector, and the shop collector shall on the next pay day return the [fol. 201] Union book to the employee at his table above specified. If the Employer hires an employee and fails to obtain his Union book and deliver the same to the shop collector, the shop collector shall then have the right to go to the employee where working for a verification of his Union affiliation and standing. In the event any employee is delinquent in either the payment of Union dues or assessments, the Employer agrees that upon being so notified by the Union of the name of such delinquent employee, that the employer shall, on the next pay day, place in such employees pay envelope the following notice; "The union has notified us that you are delinquent in Union dues and assessment. Under your Union contract it is necessary for you to pay the same to the shop collector at once in order to remain at work." The employer agrees that it will place in a convenient place in the main entrance hall of the factory, a bulletin board for the exclusive use of the Union and that the Union shall have the right to use the same for official union matters only. The employer further agrees that it will place in a convenient place on each cigarmakers' floor in the factory, a blackboard on which the Union shall have the right to place notices of Union meetings only. For the purpose of facilitating the adjustment of minor grievances and complaints which may arise in the shop which affect the shop only and not the whole industry, the

shop collector shall be the accredited agent of the Union in the shop to receive such complaints and grievances and communicate the same to the management, and the management shall attempt to compose same with the shop collector, but if the management cannot compose same with the shop collector, then the Joint Advisory Board, together with the shop collector shall thereupon take the same up with the management and if the same cannot be composed between them, the same shall then be composed in accordance with the provisions of Section 3 of this Article.

Section 3. The Joint Advisory Board and the Labor Committee of the Employer, shall meet every Saturday, if necessary, at ten o'clock A. M. for the purpose of hearing, considering and adjusting such complaints and grievances as are not covered by Section 2 hereof and also to hear and adjust such grievances arising under Section 2 as are referred to them for disposition, and if any of such grievances and complaints cannot be composed between said Board [fol. 202] and said Committee, then same shall be referred to the duly accredited officers of the Cigar Makers' International Union of America and further negotiations shall then be carried out and the controversy composed under the provisions of the Constitution of the Cigar Makers' International Union of America, issued December 1, 1937.

Section 4. It is understood and agreed that the instrument known as "The Cartabon" last dated August 27, 1937, with its rules and regulations governing the Joint Equalization Committee covering methods and systems provided in same with the exception of Rule 2, is recognized and accepted and shall remain in force and effect during the life of this contract, provided however, that it is mutually agreed by and between the parties that "The Cartabon" is by these presents amended in the following particulars:

(1) Changes in prices for the cigar makers are as set forth in Exhibit "A", hereto attached and made a part hereof.

(2) In the event of complaint in respect whether or not cigars are being made longer or shorter than the molds furnished, the same shall be investigated by the members of the Joint Equalization Committee of the Union, and the Manufacturers, at the workers benches where the same are alleged to be in use.

(3) In the event the Union claims there is any violation of any of the rules of "The Cartabon", the Union agrees that it will notify the Chairman of the Manufacturers' Division of the Joint Equalization Committee, or such other person as the Chairman may designate, at least one hour prior to the time of a meeting during a working day, and no notice to be given prior to 6:45 A. M., and it is further understood and agreed that the manufacturers will, upon receipt of such notice, furnish one or more members of the Manufacturers' Division of the Joint Equalization Committee to joint the Union members of said committee at the Labor Temple for such investigation of violation of said rules and regulations, and within one hour after such notice has been given to said Chairman, or the person designated by him, and in the event the Manufacturers' members do not appear at the labor temple in said time, the Union agrees that the its members will leave word at said Labor Temple and also notify the President of the Cigar Manufacturers Association the name of the factory to be investigated, and thereupon the Union members of said Joint [fol. 203] Equalization Committee shall have the right to proceed to make said investigation alone.

It is understood and agreed that all of the rules and regulations of "The Cartabon", not in conflict with the amendments above specified, shall remain in force and effect during the life of this agreement, and any question or controversy arising under the rules and regulations or price scales of "The Cartabon", that cannot be composed by the Joint Equalization Committee, shall be composed under the provisions of the Constitution of the Cigar Makers' International Union of America, issued December 1, 1937.

Section 5. It is understood and agreed that with respect to the "new system" of cigar manufacturing that the Union demanded that they be paid in accordance with the rules and regulations of "The Cartabon", and that the employer refused to grant this demand, and that the parties being unable to reach any agreement on this question both parties were requested by the Department of Labor of the United States Government to appear before a Panel in Washington to settle this question. Therefore, said parties hereby agree that they will appear before said Panel, as requested, and that the rules and regulations and prices covering the "New system" shall, during the life of this

agreement, be as decided by said Panel, and it is further agreed between the parties that any increase in the price scale thereon shall be retroactive to August 4, 1941.

Section 6. It is further understood and agreed that present wage and price scales and rules and regulations, and the provisions of the separate departmental agreements on present systems covering strippers, banders cellophaners, packers, pickers, leaf conditioners and helpers and clerks in all departments, including shipping, labeling and packing departments, automatic machine operators, machine attendants and wrapper selectors and bunching machine operators, shall be and remain in force and effect during the life of this contract, except as modified and changed as set forth in Exhibits "B", "C", "D", "E", "F", "G", and "H", hereto attached and made a part hereof, and except as so changed and modified, said wage and price scales, rules and regulations and the provisions of the separate agreements with said Departments, shall remain in full force and effect.

[fol. 204] Section 7. It is understood and agreed between the parties that all increases in wage and price scales herein specified are retroactive to and effective from August 4, 1941, and that the Employer shall have four weeks from the date of the execution of this contract within which to pay additional back-pay.

Article IV

Hours of Labor

Section 1. The regular hours of labor for all employees in all departments shall be forty (40) hours per week consisting of not more than eight (8) hours per day; said week to start on Monday except on holidays or exceptional days due to weather or other eventuality, except as otherwise provided in separate agreements with other departments of the employer.

Section 2. For the purpose of an equitable distribution of work the employer shall, between January 1st and March 31st, first reduce the number of working days to four days a week of eight hours per day. If in spite of this reduction of time worked, the employer considers that he cannot retain his full working force, in consultation with the Union, he shall be permitted to reduce his force in accordance with the requirements of his business, it being understood that,

during said period, he shall not work more than four days per week until he has reemployed the working force laid off. It is understood that this clause shall remain in force and effect during all the year of each year of the life of this agreement in the event the Manufacturers are not required to raise the wholesale price of a majority of the sizes of their cigars.

In the event the Manufacturers are required to raise the wholesale price of a majority of the sizes of their cigars, then the Manufacturers shall from March 31st, if such price increase occurs prior to March 31st or from the date of such price increase, if the same occurs after March 31st, be permitted to work five days per week and in the event the Manufacturer considers he cannot retain his full working force, in consultation with the Union, he shall be permitted to reduce his force in accordance with the requirements of his business, provided, however, that in such event no Manufacturer shall lay off more than 3% of his workers in any one week.

[fol. 205] In the event of the layoff of part or the whole force of employees in accordance with the above provisions, the employer shall not be permitted to engage new help before placing all of his former regular employees at work. (It is understood that future seasonal or peak time employees, that is, workers employed between September 1st and December 24th of any year, are not to be considered as regular employees.)

Section 3. In the event any regular employee shall become incapacitated for employment because of any illness or accident, he or she shall be reinstated in such employment upon his or her having recovered from such illness, provided that he or she shall return to work within sixty (60) days from the date of the commencement of such illness or incapacitation, and in the event of childbirth, any female employee shall have 120 days in which to return to work; and any worker substituted in the place of the employee thus incapacitated shall be considered only a temporary employee and subject to discharge upon the return of such regular employee, provided that if any employee does not give written notice to the management of any such illness or incapacity within seven (7) days after the commencement thereof, he or she shall not have the benefit of this provision. Upon presentation of medical certificate to the

management, such incapacitated employee shall have the right to remain absent from work for a period of six months from the date of the commencement of such incapacitation, provided such employee furnished a like medical certificate every 60 days from the commencing of such incapacitation. Any employee who is obliged to take care of sick relatives may leave work for not exceeding a period of six months, provided such employee furnishes a medical certificate of the illness or incapacitation of any relative, to the management within seven days after the commencement thereof and furnishes a like medical certificate every 30 days thereafter, to the management. In the event any such employee is incapacitated for more than six months or is required to take care of sick relatives for a period greater than six months, such employee, upon application to the manage-
[fol. 206] ment, shall be placed on a preferred list for reemployment and shall be employed by the factory as soon as work is available and prior to the employment of any other worker.

Section 4. The employer agrees at the time employees are laid off that the employer will, in the cigarmaking department on the respective sizes and in all other departments, lay off women and men employees in the percentage in which employed and that when they are called back to work they will be called back in the same percentage.

Section 5. The Manufacturer agrees to provide within his factory adequate heat during cold periods of the year; adequate artificial light where needed and agrees to make a study of the problem of adequate air circulation during the warmer periods of the year and to negotiate further with the workers by March 1st, 1942, thereon. It is further agreed, that, if space is available, the Manufacturers will provide a suitable rest room for female employees; the adequate lights and rest rooms to be installed within 60 days after the date of the execution of the Contract.

[fol. 207] Page #5

ARTICLE V

Tenure of Contract

Section 1. This Contract shall be in effect and binding upon both parties until June 30, 1943. The Union shall have the right at any time between January 1st, and March

31, 1942, to request a change in price and piece scales paid and shall have such a like right between June 1st and July 1st, 1942, and such like right between January 1st and March 31, 1943, irrespective of any other provision in this Contract, and such right shall apply to all departments and systems of manufacture.

In the event demand is made by the Union at any of the above mentioned times, the parties shall immediately meet, and if agreement has not been reached between the parties within five days thereafter, the matters not agreed upon shall then be composed under the provisions of the Constitution of the Cigar Makers' International Union of America, issued December 1, 1937.

Thirty (30) days or more before the expiration of this contract either party may give notice to the other to extend this Contract for a like additional period of time in its present or modified form and negotiations shall then be had for that purpose.

Article VI

Section 1. Although this agreement is entered into between the Cigar Manufacturers' Association as representing its membership, it is understood and agreed between both parties that a breach of this agreement by any manufacturer shall not be considered as breach by any other manufacturer and no liability or responsibility shall attach to any manufacturer except the manufacturer breaching this Contract.

Section 2. In the event any manufacturer who is a party to this Contract removes his plant from within the confines of the City of Tampa, or liquidates his business or disposes of his interests in such establishment, this Contract shall become null and void insofar as such individual signator is concerned, but shall not affect those remaining.

Section 3. It is understood and agreed that this is the standard Contract of the Union for the City of Tampa. The Union agrees that if it negotiates a contract with any manufacturer of the City of Tampa that is not a party to this Contract, and such contract as to rules, regulations or systems and or the wage scale is more beneficial than this Contract, that the employer shall have the right to adopt any such rule, regulations or systems and/or such wage

scale, applying to the same revenue class of cigars, in its entirety, and the conflicting rule or regulation and or wage scale of this Contract shall be null and void and shall be supplanted by such adopted rule or regulation or wage scale and any such adopted system shall become a part of this Contract. The Union agrees to file with the Employer copies of all contracts entered into by it with such other manufacturers.

Section 4. This Contract and each of its provisions shall be subject to all applicable Federal Laws and all Rules and Regulations issued thereunder and shall be so construed and applied.

Signed in duplicate this — day of September, 1941.

—— ——, Pres. Cigar Manufacturers' Assn. —— ——, Pres. Cigar Makers' International Union of [fol. 208] America. —— ——, Sec. Cigar Manufacturers' Assn. —— ——, Sec. Cigar Makers' International Union of America. —— ——, Pres. Joint Advisory Board, Cigar Makers' International Union of America. —— ——, Pres. Local Union No. 462. —— ——, Pres. Local Union No. 336. —— ——, Pres. Local Union No. 493.

Page # 6.

—— ——, Pres. Local Union No. 474. —— ——, Pres. Local Union No. 495. —— ——, Pres. Local Union No. 500. —— ——, Pres. Local Union No. 494. —— ——, Pres. Local Union No. 512. —— ——, Representative of Cigar Makers' International Union of America.

Name of Manufacturer, —— ——, by —— ——, Title —.

Page #7

EXHIBIT "A"

Changes in Price Scales for Cigarmaking under the "Cartabon".

On Cheroot Rollers—10% increase over present "Cartabon" prices.

Cheroot Bunch-makers by hand—.05 per thousand in addition to the present "Cartabon" prices, unless the workers in the present factories demand an additional .02 per thou-

sand, in which event the price scale shall be .07 per thousand in addition to that now specified by the "Cartabon".

Scrap Vitolas

$1.00 per thousand additional to the roller over the present "Cartabon" price.

[fol. 209] Havana

Up to $18.00, as specified in the "Cartabon", an increase of $1.50 per thousand.

Havana

$18.50 to $19.00, as specified in the "Cartabon", an increase of $1.75 per thousand.

Havana

All other "Cartabon" sizes above $19.00, $2.00 per thousand in addition to the present "Cartabon" prices.

Shade

Up to $16.00 as specified in the "Cartabon", an increase of $1.50 per thousand.

Shade

$16.50 to $18.00. as specified in the "Cartabon", an increase of $1.75 per thousand.

Shade

All other sizes in shade above $18.00, as specified in the "Cartabon", an increase of $2.00 per thousand.

It is understood and agreed that the foregoing are amendments to the rules and regulations and price scales of this department and that each existing rule and regulation and price scale not amended as above set forth, shall remain in force and effect.

[fol. 210] Page #6

EXHIBIT "B"

Clerks

Leaf Conditions and Leaf Conditioners' Helpers

First Caser	$26.50 per week of 40 hrs.
Second Caser	$23.50 per week of 40 hrs.
Third Caser	$21.00 per week of 40 hrs.
First Filler Dryer	$26.50 per week of 40 hrs.
Second Filler Dryer	$23.50 per week of 40 hrs.
Third Filler Dryer	$21.00 per week of 40 hrs.
Scrap Cleaners and Scrap Blenders	$19.00 per week of 40 hrs.

Binder Tiers	$17.00 per week of 40 hrs.
Binder Cutters	$21.00 per week of 40 hrs.
Filler Dispensers (Wherever employed)	$17.00 per week of 40 hrs.
Mold Pressers	$16.00 per week of 40 hrs.
Scrap Cleaners, working exclusively at the strainer (Gradiaz Annis style)	$13.00 per week of 40 hrs.

Apprentices

First six months	$12.00
Second six months	$15.00
Third six months	$17.00

Where only two clerks are employed in a factory, in case of layoffs no apprentice shall take the place of any clerk.

The regular work week for Clerks shall be 40 Hours per week of five days and it is agreed between the parties that the manufacturers and the Clerks shall within a reasonable time after the execution of this agreement meet and work out a mutually satisfactory agreement covering Sunday work and split work on Fridays and Saturdays for Casers only and shall also within a reasonable time meet and negotiate classification of the duties of hygienic operations and likewise negotiate a wage scale for mechanics and machine attendants.

Mold Pressers

If a mold presser presses the mold for more than six machines he shall be paid in addition to the above wage scale for each week he presses for more than six machines 1/6 of said wage scale for each additional machine for which he presses molds and if there is more than one mold presser in a factory in which a presser takes care of more than six machines, such additional work shall be rotated among the pressers equally so that each may receive the additional compensation hereby provided for.

Scrap cleaners and scrap blenders, binder tiers, and filler dispensers, if employed more than ten hours during any week in the manipulation of fillers and wrappers, shall be considered as third clerks and paid accordingly for that week.

[fol. 211] Shipping, Labeling and Packing Department

Those firms employing a shipping clerk who is not manager of the shipping or labeling department—$24.00 per week of 40 hours.

Labeling pasters and helpers in shipping and labeling departments—$16.00 per week of 40 hours.

Helpers in packing room—$16.00 per week of 40 hours.

It is understood and agreed that the foregoing are amendments to the rules and regulations and price scales of this department and that each existing rule and regulation and price scale not amended, as above set forth, shall remain in force and effect.

Page #9

EXHIBIT "C"

Banders and Cellophaners

Banding packed in 1/40	$ .70 per thousand
Banding packed in 1/20	.65 per thousand
Cellophaning packed in 1/40	.60 per thousand
Cellophaning packed in 1/20	.55 per thousand
Where employee both bands and cellophanes in 1/20	1.20 per thousand
Where employee both bands and cellophanes in 1/40	1.25 per thousand
Wrapped in plain cedar	.52 per thousand
All other prices now paid in the banding and cellophaning department for hand work an increase of	.05 per thousand
except when flaps are cut and placed by the banders which shall remain at	.05 per thousand
Automatic banding, cellophaning, and perforating machines per operators on 1/20	.13 per thousand
on 1/40	.13½ per thousand
Filling packs on combination automatic, banding, cellophaning, and perforating machines per operators on 1/20	.13 per thousand
on 1/40	.13½ per thousand
Work per hour	.40
Work per day of eight hours	3.20

It is understood and agreed that the foregoing are amendments to the rules and regulations and price scales of this department and that each existing rule and regulation and price scale not amended, as above set forth, shall remain in force and effect.

[fol. 212] Page #10

EXHIBIT "D"

Bunching Machines

Vitolas	$1.35 per thousand
Cheroots	1.02 per thousand

If the operator presses the bunches, .10 additional shall be paid per thousand.

If the operator has to clean and grease the machine, .05 additional shall be paid per thousand.

If he cleans the machine only .02½ additional per thousand, or if the operator greases the machine, only .02½ additional per thousand.

Cleaning is hereby defined to be brushing and cleaning the machine with brushes and rags and does not include dusting by blowing with air.

If the operator has to carry stock, .05 additional shall be paid per thousand.

Molds will be furnished to the operators equally and the manufacturer will furnish all available molds to the bunch breakers.

Bunch makers shall start their work a sufficient length of time before the rollers so that the rollers will not have to wait for bunches.

Rule for Apprentices

In each factory using up to 25 machines there may be one apprentice every 12 months; if more than 25 machines, two apprentices every 12 months.

It is understood and agreed that the foregoing are amendments to the rules and regulations and price scales of this department and that each existing rule and regulation and price scale not amended, as above set forth, shall remain in force and effect.

Page # 11

Exhibit "E"

Price Scale for Short Filler Cigars (Cheroots), Pickers and Packers Department, Class A

[fol. 213] One-tenth and one-twentieth—10 and 13 Top, Class A, $1.30 per thousand where the employee is given filler cigars in equal percentage with other pickers and packers. When the Manufacturer is able to give filler cigars to the pickers and packers, and does not do so, then the price shall be $1.35.

One-fortieth, 13 Top, Class A, $2.20, subject to the conditions set forth in separate agreement executed by the Manufacturers.

Cigars—Class A, packed in cans, One-twentieth, $1.05.

Cigars—Class A, Triangled on boards faced or not faced, $1.25.

One-tenth and one-twentieth, 17, 20, 25 Tops, Class A, $1.75.

Short Filler Cigars (Cheroots), Above Class A

One-tenth and one-twentieth, 10 and 13 Top, $1.70.
One-twentieth, 17 Top, $1.80.

Cigars Above Cheroots

One-twentieth, Cans, No bands, $1.45.
One-twentieth, Cans, Banded, $1.55.
One-fortieth, Cans, with or without Bands, $1.90.

A firm employing from one to eight teams of packers shall be permitted one apprentice, and for nine or more teams of packers there shall be permitted two apprentices, except so long as the Employer keeps twenty-four or more teams of packers, he shall be entitled *in* three apprentices.

It is understood and agreed that the foregoing are amendments to the rules and regulations and price scales of this Department, and that each existing rule and regulation and price scale not amended, as above set forth, shall remain in force and effect.

EXHIBIT "F"

Wrapper Selectors

1

Wrapper selectors shall be paid on a weekly basis the following wage scale each week in which employed:

First Class Selector	$34.00
Second Class Selector	31.00
Helpers or Assistants	29.00
Third Class Selectors	27.50
Fourth Class Selectors	23.00

[fol. 214] For each day worked the Selectors will be paid 8/40 of the above listed weekly wage.

2

No more Fourth Class Selectors shall be employed in the respective factories than the number that now exists, which number in each Association factory is as follows:

Factory	Number of 4th Class Selector
Corral-Wodiska	6
Santaella	4
Gradiaz-Annis	8
Perfecto Garcia	0
Regensburg	0
Cuesta-Rey	0
Garcia & Vega	5
Berriman	1
Morgan	3
La Integridad	0
Salvador Rodriguez	1
Arango & Arango	0
Jose Arango	2
Roberts	1
Preferred Havana	0
Lopez Alvarez	0
M. Bustillo	0

In the case of vacancy in the position of Fourth Class Selectors, unless such Selector shall quit his job, such vacancy shall be filled by a selector of a higher classification, and if a Fourth Class Selector quits, his place shall not be filled by a selector from the same factory of a higher class.

3

In the event a wrapper selector is absent on account of illness for more than two consecutive days, and the management does not employ a substitute to take his place, thereafter during his said illness, and there is no general reduction in the number of cigars during said illness, the wrapper selector thus absent by virtue of such illness, shall be paid his regular salary during his illness.

4

It is understood and agreed that the foregoing are amendments to the rules and regulations and price scales of this Department, and that each existing rule and regulation and price scale not amended, as above set forth, shall remain in force and effect.

Page # 13

EXHIBIT "G"

Stripping Department

[fol. 215] (1) Havana wrappers of not more than 60 leaves per bundle (Cavilla) 24 cents per Bunch of 4 Bundles.

(2) Havana Capero not more than 80 leaves per Bundle, 28 cents per Bunch of 4 Gavillas to the Bunch (Manojo).

(3) Wrappers and second (Caperos) of shade grown shall contain the same number of leaves and be the same prices as Havana wrappers and Capero.

(4) Wrappers stripped by machine shall be paid at 18 cents per Manojo with the same average not to exceed 240 leaves.

(5) Regular (Vuelta Abajo) and Partido (excepting the fillers known as Light Brown) up to 100 pounds net per bale at 14 cents per Bunch (Manojo) of 4 Bundles (Gavilla) in case that the bale weighs more than 100 pounds net, an additional 10 percent increase will be paid per Bunch (Manojo) for each 10 pounds in excess. It is understood that each fraction of more than 4 pounds shall be considered as 10 pounds.

(6) Fillers known as Light Brown (Partido fillers) up to 100 pounds net per bale, at 18 cents per Bunch (Manojo) of

4 Bundles (Gavillas); in case the bale weighs more than 100 pounds net, an additional 10 per cent increase will be paid per Bunch (Manojo) for each 10 pounds in excess. It is understood and agreed that each fraction of more than 4 pounds shall be considered as 10 pounds. If there is more than one separation other than for broken leaves, 2 cents additional shall be paid.

(7) Puntilla capadura (leaf of second cut) partido or remedios shall be paid at 18 cents per Bunch (Manojo) of 4 Bundles (Gavillas), and the price to increase according to the weight of the bale, as in the regular fillers, according to the weight.

(8) Havana fillers whole stemmed, not to exceed 240 leaves per Manojo (Bunch) 18 cents per Bunch (Manojo); when exceeding that number the Cartabon rules shall apply in full. In case that the strippers are compelled to pick wrappers from this filler, the price paid shall be that of (Caperos) excepting this shall not apply to shade grown, since this class is classified as Binders regarding price and number of leaves.

(9) When strippers are compelled to separate Binders (Capotes) or wrappers they shall be paid 2 cents more per Bunch (Manojo);

(10) Shade grown fillers stripped at half stem shall be paid at 13½ cents per 1¼ pounds wet weight.

(11) Binders stripped by hand 18½ cents per Manojo with the average of 180 leaves.

(12) Binders stripped with machine 13½ cents per Manojo, the same average of 180 leaves per Manojo.

(13) For opening the tops of domestic fillers to be used as binders 14 cents per 1¼ pounds wet weight. For opening tops of Havana fillers to be used as binders 13 cents per karat (Manojo). For each 400 leaves of wrappers picked from fillers 24 cents.

(14) Domestic binders shaved with machine 13½ cents per 1¼ pounds wet weight.

[fol. 216] (15) It is understood and agreed that the foregoing are amendments to the rules and regulations and price scales of this Department, and that each existing rule

and regulation and price scale not amended as above set forth shall remain in force and effect.

Page #14

EXHIBIT "H"

Automatic Machines for Scrap

1

Each operator on Automatic machines, without limitation as to shape or thickness, and not to exceed 5½ inches in length, $1.00.

2

Each operator on automatic machines, without limitation as to shape or thickness, exceeding 5½ inches in length, $1.10.

3

It is understood and agreed that the foregoing are amendments to the rules and regulations and price scales of this Department, and that each existing rule and regulation and price scale not amended, as above set forth, shall remain in force and effect.

Page #4

Section 2. For the purpose of an equitable distribution of work in dull or slack periods, the employer shall first reduce the number of working days to four days per week of eight cents per day. If, in spite of this measure, the employer finds a reduction in the number of employed essential, in consultation with the Union he shall be permitted to reduce his force in accordance with the requirements of his business.

Should the Employer lay off part or the whole force of his employees on account of lack of work, upon resuming work, the Employer shall not be permitted to engage new help before placing all his former regular employees at work. (It is understood that future seasonal or peak-time employees, that is, workers employed between 1st of September and 24th of December of any year, are not to be considered as regular employees.

Section 3. In the event any regular employee shall become incapacitated for employment because of any illness

or accident, he or she shall be reinstated in such employment upon his or her having recovered from such illness, provided that he or she shall return to work within sixty (60) days from the date of the commencement of such illness or incapacitation, and in the event of childbirth, any female employee shall have 120 days in which to return to work; and any worker substituted in the place of the employee thus incapacitated shall be considered only a temporary employee and subject to discharge upon the return of such regular employee, provided that if any employee does not give written notice to the management of any such illness or incapacity within seven (7) days after the commencement thereof, he or she shall not have the benefit of this [fols. 217-218] provision. Upon presentation of medical certificate to the management, such incapacitated employee shall have the right to remain absent from work for a period of six months from the date of the commencement of such incapacitation, provided such employee furnishes a like medical certificate every 60 days from the commencing of such incapacitation. Any employee who is obliged to take care of sick relatives may leave work for not exceeding a period of six months, provided such employee furnishes a medical certificate of the illness or incapacitation of any relative, to the management within seven days after the commencement thereof and furnishes a like medical certificate every 30 days thereafter, to the management. In the event any such employee is incapacitated for more than six months or is required to take care of sick relatives for a period greater than six months, such employee, upon application to the management, shall be placed on a preferred list for re-employment and shall be employed by the factory as soon as work is available and prior to the employment of any other workers.

Section 4. The employer agrees at the time employees are laid off that the employer will, in the cigarmaking department on the respective sizes and in all other departments, lay off women and men employees in the percentage in which employed and that when they are called back to work they will be called back in the same percentage.

Section 5. The Manufacturer agrees to provide within his factory adequate heat during cold periods of the year; adequate artificial light where needed and agrees to make a

study of the problem of adequate air circulation during the warmer periods of the year and to negotiate further with the workers by March 1st, 1942, thereon. It is further agreed, that, if space is available, the Manufacturers will provide a suitable rest room for female employees; the adequate lights and rest rooms to be installed within 60 days after the date of the execution of the Contract.

Clerk's Certificate to foregoing papers omitted in printing.

[fol. 219] In United States District Court

Objections to and Motion to Strike Affidavit of Glenn McClung Filed by Plaintiffs—Filed May 25, 1945

The defendant J. Tom Watson as Attorney General of Florida, by his undersigned solicitors and Counsel, objects to the filing of and moves to strike from the file the affidavit of one Glenn McClung proffered by the plaintiffs at the beginning of the hearing on The Motion to Dismiss, filed by said defendant in said cause upon the following several grounds as to each part of said affidavit separately:

1. That said affidavit was obviously filed for the purpose of strengthening and bolstering up insufficient allegations of the said Complaint and in an attempt to avoid amending said Complaint, and the said Complaint may not be amended by filing a separate affidavit.

2. That said affidavit in attempting to set forth the address and place of residence of the said defendant J. Tom Watson, at Tampa, Florida, is irrelevant and immaterial; and said residence of the said defendant as an individual is not sufficient to confer upon this Court jurisdiction of said cause as to said defendant, because the said defendant is sued as Attorney General of Florida and not individually, and the official residence of said defendant prescribed by law is at Tallahassee, Florida, in the Northern District of Florida.

3. That the part of said affidavit in which is set forth allegations and conclusions as to the ownership of properties by plaintiffs, is irrelevant, immaterial and incompetent, because it seeks to give opinions and conclusions as to value

of said properties and as to the effect of the right to work amendment thereon and the loss and damage that affiant concludes will in the future result therefrom, and that said allegations and conclusions are not sufficient to supply the ommissions from the Complaint in the jurisdictional allegations thereof.

4. That the part of said affidavit, having to do with affiant's opinion as to the effective functioning of labor organi-
[fol. 220] zations is irrelevant, immaterial and incompetent, because it constitutes the Conclusion or guess of affiant as to the effect of said right to work amendment without any supporting facts.

5. That the said part of said affidavit in which the Constitution and by-laws of plaintiff unions are put forward in opposition to said amendment is irrelevant, immaterial and incompetent because said constitution and by-laws are of no force or effect in opposition to existing law, and because the effect of said amendment as described by said affidavit in connection therewith are mere conclusions and guesses as to future unknown conditions.

6. That the said part of said affidavit having to do with said quo warranto proceedings, both present and alleged to be in prospect, and said quotations from the press as to civil and criminal proceedings, are irrelevant, immaterial and incompetent, because they constitute mere conclusions and guesses as to future conditions which in the aggregate do not constitute a sufficient showing of irreparable injury, as decided by the Supreme Court of the United States in the case of Watson vs. Buck, 313 U. S. 397-399, 85 L. Ed. 1422, as quoted and cited in defendant's brief on pages 34 and 35.

7. That the newspaper clippings presented with said affidavit are irrelevant, immaterial and incompetent, and constitute mere statements by third parties that are unsupported by any proof whatsoever and are mere hearsay.

8. That the said part of said affidavit in which said affiant sets forth the conclusion that if plaintiff unions recognize the right to work provisions they will be deprived of their civil and property rights and suffer irreparable injury and other effects thereof, is irrelevant, immaterial and incompetent and does not set forth any fact or facts to support

said conclusions and are insufficient to make or constitute an amendment of or support for the insufficient allegations of the complaint.

J. Tom Watson, Attorney General of Florida. George M. Powell, Assistant Attorney General; [fol. 221] Sumter Leitner, Assistant Attorney General; Howard S. Bailey, Assistant Attorney General, Attorneys for J. Tom Watson, as Attorney General of Florida, Defendant.

IN UNITED STATES DISTRICT COURT

ORDER SUSTAINING MOTION TO DISMISS OF THE DEFENDANT, CIGAR MANUFACTURERS ASSOCIATION OF TAMPA—Filed May 24, 1945

Now on this day the above cause comes on for hearing before the Three Judge Court on the motion of the defendant, Cigar Manufacturers Association of Tampa to dismiss the complaint as against said defendant. The respective parties are present by their attorneys of record and now the attorneys for the plaintiff announce that they have no objection to the Court sustaining said motion.

It is therefore by the Court, Ordered and Decreed that said motion of the defendant, Cigar Manufacturers Association of Tampa to dismiss be and the same is hereby sustained and said Cigar Manufacturers Association of Tampa be and it is hereby dismissed as a party defendant of and from said suit.

This 24th day of May, A. D. 1945.

William J. Barker, U. S. District Judge.

[fol. 222] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA, TAMPA DIVISION

No. 881—Civil

AMERICAN FEDERATION OF LABOR, FLORIDA STATE FEDERATION OF LABOR, et al., Plaintiffs and Representatives of a Class,

vs.

J. TOM WATSON, as Attorney General of the State of Florida, et al., Defendants and Representatives of a Class, and Tampa Shipbuilding Company Inc., et al., Nominal Defendants

Findings of Fact and Conclusions of Law—Filed June 11, 1945

FINDINGS OF FACT

1. No facts are put in issue by any answer filed in this cause.

2. All allegations of fact, as distinguished from conclusions of law, contained in the complaint are admitted by the motion of the Attorney General to dismiss, and no factual issues necessary to a decision in this cause are involved.

CONCLUSIONS OF LAW

1. The District Court of the United States has jurisdiction of the controversy under Section 41(1) of Title 28, U. S. C. A.

2. The District Court of the United States has jurisdiction of the controversy under Sections 41(14) of Title 28 and 43 of Title 8, U. S. C. A.

[fol. 223] 3. A three-judge Court has jurisdiction under Section 380 of Title 28, U. S. C. A.

4. The amendment to Article 12 of the Declaration of Rights of the State of Florida is not in violation of any provision of the Federal Constitution.

5. Said amendment to said constitution is an appropriate exercise of the police power of the State of Florida.

6. It does not appear on the face of the amendment or on the face of the complaint that said amendment collides

with any statute of the United States regulating labor in interstate commerce, but without deciding that no situations could arise which would result in conflict between Federal statutes and the said constitutional amendment, we find that such situations are not exhibited herein and that no case is made out for the granting of an injunction against the defendants, or either of them, even if it be conceded that a three-judge Court has the authority to enjoin corporate or individual defendants who are not officers of the State nor charged with the enforcement or execution of the constitutional amendment in question.

7. Whether or not the allegations of the complaint appropriately allege irreparable injury is not necessary to a decision.

The conclusions of the Court are more fully set forth in the opinion attached hereto.

Curtis L. Waller, U. S. Circuit Judge; William J. Barker, U. S. District Judge; Dozier A. DeVane, U. S. District Judge.

[fol. 224] In the District of the United States for the Southern District of Florida, Tampa Division

No. 881—Civil

American Federation of Labor, Florida State Federation of Labor, Et Al., Plaintiffs and Representatives of a Class,

vs.

J. Tom Watson, as Attorney General of the State of Florida, Et Al., Defendants and Representatives of a Class and Tampa Shipbuilding Company, Inc., Et Al., Nominal Defendants.

Before Waller, Circuit Judge, and Barker and Devane, District Judges

Opinion—Filed June 11, 1945

Waller, Circuit Judge:

The 1943 session of the Legislature submitted to the people of Florida the following amendment as an addition

to Section 12 of the Declaration of Rights of their Constitution:

> "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer."

The people, at the General Election of 1944, adopted the proposed amendment.

[fol. 225] The American Federation of Labor, other State and national labor unions affiliated therewith, certain individuals suing as such and in their capacities as presidents of certain local unions, and certain corporate and individual employers of labor in Florida, all as plaintiffs and representatives of a class, brought suit in the United States District Court for the Southern District of Florida, Tampa Division, against the Attorney General and the Governor, as well as the State Attorney, County Solicitor, and Sheriff of Hillsborough County, as defendants and representatives of a class, and also against certain corporations named as nonfinal defendants, asserting that said amendment was in conflict with several provisions of the Federal Constitution and statutes and praying temporary and permanent injunctions against the defendants in said suit.

The District Judge granted the temporary restraining order and caused this three-judge court to be assembled.

Jurisdiction of the Federal Court was predicated upon the allegations that the suit arises under Section 10 of Article I, Article VI, and the First and Fourteenth Amendments to the Constitution of the United States as authorized by Section 41(1) of Title 26, U. S. C. A., and that it is also a suit for redress for the deprivation of civil rights as permitted by Section 41(14) of Title 28, and Section 43 of Title 8, U. S. C. A. Jurisdiction of the three-judge Court is asserted under Section 380, Title 28, U. S. C. A.

The motion of the Attorney General of Florida to dismiss presents the legal issues upon which the case has been heard and which form the basis of the controversy, to wit:

I. Whether the allegations of the complaint are sufficient to vest jurisdiction in the District Court of the United States:

(a) as a controversy arising under the Constitution and the laws of the United States involving an amount in excess of $3,000.00 under Section 41(1) of Title 28, [fol. 226] U. S. C. A.; or

(b) as a suit for the redress of the deprivation of civil rights under Section 41(14) of Title 28, U. S. C. A., or Section 43 of Title 8, U. S. C. A., under which sections the amount in controversy is not material to a suit; and

(c) Even if the District Court of the United States has jurisdiction under either of the aforementioned sections, whether a case for the convening and consideration of a three-judge Court under Section 380, Title 28, U. S. C. A., has been shown.

II. Whether the amended section of the Constitution of the State of Florida deprives the plaintiffs of any rights under the following provisions of the Constitution and laws of the United States:

(a) Section 10 of Article I of the Federal Constitution, prohibiting any state from passing any law impairing the obligation of contracts;

(b) Article VI of the Federal Constitution, providing that the Constitution, and laws of the United States which are made in pursuance of the Constitution, shall be the supreme law of the land;

(c) The First Amendment of the Constitution of the United States, prohibiting Congress from making any law abridging the freedom of speech or of the press or the right of the people peaceably to assemble and to petition the Government for redress of grievances;

(d) The Fourteenth Amendment, which prohibits any state from making or enforcing any law abridging the privileges or immunities of citizens of the United

States or from depriving any person of life, liberty, or property without due process of law or from denying [fol. 227] to any person the equal protection of the law;

(c) Sections 161 to 166 of Title 29, U. S. C. A., commonly known as the National Labor Relations Act.

III. Whether or not the allegations of fact in the complaint, as distinguished from conclusions of law, show irreparable injury on the part of the plaintiffs, or either of them.

IV. Whether or not the plaintiffs, or any of them, are entitled to maintain a suit for the deprivation of civil rights under the Constitution and laws of the United States.

V. Whether or not the constitutional amendment is a valid and lawful exercise of the police power reserved to the State under the Constitution.

VI. Whether or not there is any conflict between the provisions of the National Labor Relations Act and said constitutional amendment.

There are certain minor, and more or less collateral, questions as to the propriety or legality of joining certain parties as plaintiffs and making certain other defendants,[1] nominal or otherwise, but in contrast to the importance of the issues presented here it seems unnecessary to give them particular attention. We prefer to come as promptly as possible to the real issues in the case, with the idea of expediting the progress of this case to the Supreme Court, knowing full well that what we here say will not be long remembered.

[fol. 228] We are of the opinion that under the allegations of the complaint the United States District Court for the Southern District of Florida, as distinguished from a three-judge Federal District Court, has jurisdiction under the

[1] Rule 17b of the Federal Rules of Civil Procedure provides:

"That a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States."

allegation that the suit arises under the Constitution and laws of the United States and where the amount in controversy is required to exceed $3,000.00, exclusive of interest and costs,[2] and that such Court also has jurisdiction of the controversy as a suit to redress alleged deprivation of civil rights under Sections 43 of Title 8 and 41(14) of Title 28, U. S. C. A.

The question of whether or not a three-judge Court has jurisdiction is more difficult. The controlling statute is Section 380 of Title 28, U. S. C. A., which prohibits a single District Judge from entering "an interlocutory injunction sustaining or restraining the enforcement, operation, or execution of any *statute* of a state by restraining the action of any officer of such state in the enforcement or execution of such statute, * * *." (Emphasis added.) Nothing is said in this statute as to restraining the enforcement of a provision in the *constitution* of a state. There is, of course, a wide distinction between a constitutional amendment, adopted by the people, and a statute passed by the Legislature. A mere majority of the Legislature may enact a statute, with the Governor's approval, but it takes three-fifths of the members of both Houses of the Legislature of Florida even to propose an amendment to the Constitution, and the proposed amendment must then be published in a newspaper in every county of the state for three months before the next general election, and at which it must receive a majority of those voting thereon in order to become a part of the organic law [fol. 229] of the state. (Article 17, Section 1, Constitution of the State of Florida.) A state statute is an inferior source of law to that of a state constitution, and cannot stand in opposition to it.

United States District Courts are courts of limited jurisdiction, and particularly is this true of a three-judge Court. It is wholly statutory and all questions as to its jurisdiction must be strictly construed. Phillips vs. United States, 312 U. S. 246.

Cognizant that a three-judge Court is without jurisdiction to grant an injunction in a case involving a municipal

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[2] See Form 2 of the Federal Rules of Civil Procedure as to allegation of amount in controversy.

ordinance which is alleged to be unconstitutional [3] and that the same is true where an injunction is sought against a state statute which is not statewide in its scope,[3] we entertain grave doubt as to whether or not we, as a three-judge Court, have jurisdiction of the case here for the reason that the constitutionality of no statute of the State of Florida is involved. Were it not for certain language in the case of *of* Phillips vs. United States, supra, and an appreciation of the fact that the dictum of today may, perhaps, be the law of tomorrow, we would hold that this Court is without jurisdiction. In the Phillips case neither the State Constitution nor statutes were under attack, but only the acts of the Governor which had been done under color of general provisions of the Constitution and laws of Oklahoma; however, the Supreme Court said that in order to bring the procedural device of the three-judge Court into play a suit is required "which seeks to interpose the Constitution against the enforcement of a state policy, whether such policy is defined in a State Constitution or in an ordinary statute or through the delegated legislation of an 'administrative board or commission,' " although the statute mentions neither state constitutions nor state policies, nevertheless the Court held that the law in reference to the juris- [fol. 230] diction of the three-judge Court could not be liberally construed but could only be construed "as an enactment technical in the strict sense of the term and to be applied as such." The decision inveighed against stretching the three-judge Court statute, meanwhile apparently stretching it to include state constitutions and state policies. As we interpret the language in the Phillips case the scope of the three-judge Court statute has been enlarged from an injunction restraining the enforcement of "any statute of a state" to the "enforcement of a state policy, whether such policy is defined in a state constitution or in an ordinary statute." So in conformity to the inharmonious language in the Phillips case, quoted above, we hold that a three-judge Court has jurisdiction. We doubt not that the statute ought to have prohibited a single judge from enjoining action under a state constitution, for it seems

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[3] Ex Parte Collins, 277 U. S. 565.

[4] H. C. Rorick vs. Board of Commissioners of Everglades Drainage District, 307 U. S. 208.

incongruous that a single judge should be able to enjoin action under a constitutional provision but that he could not do so under a state statute.

The motion to dismiss, admitting all of the facts appropriately alleged in the complaint, but not legal conclusions, presents three important legal questions:

1. Is the Florida constitutional amendment in violation of any provisions of the Federal Constitution?

2. Is the constitutional amendment a valid exercise of the police power of the State of Florida?

3. Is the constitutional amendment in conflict with the provisions of any Federal statutes which were enacted within the power delegated to Congress?

No substantial question of fact is involved requiring the taking of testimony or the making of express findings of facts.

The authority of the United States is supreme on all subjects which the Constitution has committed to it, and a state constitution, like a state statute, must fall if it is contrary to any provisions of the Federal organic law,[5] [fol. 231] or if it is in conflict with any provisions of the Federal statutes that were enacted within the scope of the power conferred upon Congress by the Constitution.[6]

The wording of the Florida Constitutional amendment is difficult, but it definitely does not violate the First Amendment by abridging freedom of speech or of the press or of the right of assembly, or the right of petition to the Government for redress. The assaulted amendment under-

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[5] "The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the Court. One's right to life, liberty, and property, free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." Justice Jackson in Board of Election vs. Barnett, 319 U. S. 624.

[6] Article VI, U. S. Constitution; Panhandle Oil Co. vs. Mississippi, 277 U. S. 218.

takes to preserve to employees, in full vigor, the right of collective bargaining. Instead of preventing or abridging the rights of speech, press, assembly, and petition, the amendment seeks to preserve it to those who do not join a labor union as well as to those who do. This amendment has no similarity to anti-picketing statutes or statutes which require the payment of a license by a labor organizer. The amendment is not in violation of the First Amendment to the Federal Constitution. The same is true of the allegations as to its violation of the Fourteenth Amendment. There is no prohibition against a citizen belonging to any union that he chooses, but the prohibition seems to be against requiring membership in the union in order for a citizen to be eligible for work. Under statutes of the United States, such as Section 102, Title 29, U. S. C. A., a citizen is declared to be free to join a union or not, and one of the purposes of that statute, as well as the National Labor Relations Act, was to accord to employees full freedom to belong, or not to belong, to a union. The Florida constitutional amendment prohibits no one from joining a union but undertakes to declare that it shall not be a condition precedent to the right to work. It does not deny the labor union member the equal protection of the law, [fol. 232] but appears to be designed to give to the non-union worker a protection of law which he had not theretofore enjoyed.

There is no vested right to have the police power of a state remain static. Every contract, involving subject matter that affects the public interest, into which a citizen may enter, is subject to the right of a state to regulate or to prohibit whenever it is deemed by the state to be essential in the public interest, and when it violates no provision of the superior national or state law. Contracts entered into prior to state and Federal prohibition against the manufacture or sale of intoxicating liquor were not held to have been illegally impaired by the adoption of prohibition when the states, and subsequently the nation, deemed prohibition to be in the public interest.

There are general allegations in the complaint as to contracts entered into prior to the amendment and alleged to have been impaired by it, but even if these allegations meet the requirements for definiteness and specificity in order to call forth the injunctive processes of the Court, the question first to be answered would be whether or not the state

was without authority in the exercise of its police power to adopt the amendment in question.

There are certain principles relating to the police power of the states so axiomatic as not to need a statement as to their source, that might well be restated here.[7]

1. The United States is a government of limited, enumerated, and delegated powers, having only such authority as has been granted to it by the Constitution or necessarily implied therefrom.

2. In construing a law of the United States we look to see if power has been granted, but in construing a law of the state we look to see if it has been prohibited, realizing that all attributes of the government that have not been [fol. 233] surrendered by the adoption of the Federal Constitution and its amendments have been retained by the state.

3. It is fundamental that state laws must yield to the superior force of Federal laws which were passed within the sphere of delegated powers. However, a state law is superseded by a congressional law only to such an extent as the two are inconsistent.

4. An act passed under the police power of a state cannot be cast aside as inconsistent with an act of Congress unless there is an actual repugnancy or a complete taking over of the legislative field by Congress, and the rule has been laid down that a state statute is in conflict with a Federal statute when one may incur the penalty of the Federal statute by obeying the state statute, or vice versa.

5. The police power of a state is very broad and comprehensive and is liberally understood and applied. This principle is so well recognized and the police power is of such elasticity that the principle of stare decisis has no application to an exercise of this power. This position is justified, for if it were not thus mistaken decisions might destroy the power of society to protect itself. The state cannot contract away its police power[8] and the Courts

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[7] See discussions in 11 Amer. Jur., Const. Law., Police Power, Sec. 245, et seq.

[8] Stone vs. Mississippi, 101 U. S. 814.

cannot decide away that which the state itself cannot contract away.

6. The courts cannot create a new Constitution. Laws and court-made rules of expediency must not be placed above the Constitution.

7. Labor and labor unions are affected with a public interest and are subject to the regulatory power of the states for any reasonable regulation which will not be inconsistent with the Constitution of the United States and statutes enacted within the scope delegated by the Constitution to the Congress.

[fol. 234] 8. Collective bargaining, self-organization, and other kindred union activities necessarily involve the rights of free speech, freedom of the press, freedom of assembly, and freedom of petition, which may not be denied by state statute or constitution, but we also must recognize that the total of union activity is directed toward economic objectives which involve purely commercial activities and which may be regulated by the state upon any reasonable basis when not in conflict with superior law.

9. The very existence of the state as well as "The security of the social order, the life and health of the citizen, the comfort of existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property,"[9] depend upon the police power of that state.

10. "The powers that are not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the states respectively, or to the people."[10] The states existed before the Constitution of the United States, and they possessed the police power before the adoption of that organic document,[11] and that police power

11. There is, in the strict sense, no Federal police power.

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[9] Slaughterhouse cases, 16 Wall. 36.

[10] Tenth Amendment, Federal Constitution.

[11] N. Y. vs. Miln, 11 Peters (U. S.) 102.

was not by the Constitution delegated to the United States, and hence under the Tenth Amendment it is reserved in the states or in the people.

12. Rule by the majority is the essence of democracy. Members of a labor union are citizens first and subject to the will of the majority, lawfully exercised, and where that will has been exercised by a direct expression of the people at the polls the result is the fullest exercise of the democratic process and the fullest expression of the source of all political power—the people. "All rights are derived [fol. 235] from the purposes of the society in which they exist; above all rights rises duty to the community." (Dissenting opinion of Justice Brandeis in Duplex Company vs. Derring, 254 U. S. 443.)

13. The wisdom or lack of wisdom of a state statute or of a provision in a state constitution is not a matter for the courts. The people, through their representatives in the Legislature and through their vote for an amendment to their constitution, have the right to commit folly if they please, provided it is not prohibited by the Federal Constitution or antagonistic to Federal statutes authoritatively enacted concerning the matter involved. "The conditions developed in industry may be such that those engaged in it cannot continue their struggle without danger to the community. But it is not for judges to determine whether such conditions exist, nor is it their function to set the limits of permissible contest and to declare the duties which the new situation demands." (Dissenting opinion of Justice Brandeis in Duplex Company vs. Deering, supra.)

14. It is the duty of the court to indulge in the presumption that the amendment is not in conflict with the organic law unless the contrary is clearly made to appear.

A consideration of these fundamental concepts impels the conclusion that the Florida constitutional amendment does not contravene any provision of the Federal Constitution and for aught that now appears it is a valid exercise of the police power of the State of Florida. Definitely labor unions are affected with a public interest as exemplified by the National Labor Relations, the Norris-La Guardia, and Fair Labor Standards Acts, passed by Congress in and about the regulation of interstate commerce and by numerous acts by state legislatures regulating labor unions in phases not embraced within the scope of the power of the national congress.

[fol. 236] In view of the fact that no labor legislation by Congress has required an employee to belong to a labor

union or has made the closed shop mandatory, but on the contrary the Federal public policy in regard to compulsory membership in labor unions is stated in Section 102 of Title 29, U. S. C. A., as follows:

> .... * * the individual unorganized worker is commonly helpless to exercise actual liberty of contract to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though *he should be free to decline to associate with his fellows*, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, * * ....
> (Emphasis supplied.)

and in view of the provisions of the Florida amendment that it shall not be construed to deny or abridge the right of employees by and through a labor union to bargain collectively with an employer, there does not appear to be any provision of the Federal labor regulatory statutes with which the constitutional amendment collides. So long as the right to organize into a union and to bargain collectively is not abridged, there is no denial of freedom of speech, press, assembly, and petition. Whatever was traditionally a part of the process of collective bargaining seems to have been left unabridged by the second clause in the amendment.

The amendment makes it possible for the non-union worker to have "a free ride," that is, to have the benefit of the gains and advantages that have accrued through the planning, the effort, the expense, the struggle, and the influence of the unions, without bearing any of their burdens, but this permissive incidence of poor sportsmanship is not new in the law. A substantial portion of the population in many communities have all the benefits of government, yet pay no taxes. Occasions are not singular when free riders in government are the recipients of its greatest solicitude, and that fact that the law gives an unearned [fol. 237] advantage to the dissident or disinterested is but slightly dissimilar to the building of a school house largely from taxes paid by corporations which have no children to educate. This ground of objection was one for the Legislature and the people rather than the courts.

It will be observed that the constitutional amendment is not self-executing and no enforcing legislation has been enacted. No prosecution under a criminal statute is involved, and although the Attorney General contends that a closed shop was illegal under Section 1 of Chapter 4144, Laws of Florida, Acts of 1893 (Sec. 833.02, Florida Statutes, 1941), nevertheless, it is noted that the Supreme Court of Florida, in the case of Jetton-Dekle Lumber Company vs. Mather, et al., 43 So. 590, held that the Act "will not be applied to the case of union laborers who strike in order to secure all the labor for themselves," which seems to say that the statute did not prohibit a closed shop. This decision, under Erie Railroad vs. Tompkins, 304 U. S. 64, is binding under the Federal Court.

A three-judge Court cannot be convened merely to prevent a multiplicity of suits in the state courts by the Attorney General against employers of labor. But it does not seem necessary for us to determine whether or not irreparable injury to plaintiffs can result, nor do we here undertake to decide what complications might arise out of the operations of the National Labor Relations Act and the Florida constitutional amendment, but deem it necessary only to say that the Federal Act and the amendment on their face do not appear to be in conflict, and it will be time enough to judge of such conflicts if and when they actually arise. This is not an action for a declaratory judgment but an injunction suit in anticipation of irreparable injury.

From the foregoing it appears that the temporary injunction granted herein should be dissolved and vacated, and the motion of the Attorney General to dismiss the complaint should be sustained.

Let an appropriate order be submitted.

[fol. 238] IN UNITED STATES DISTRICT COURT

ORDER DISSOLVING TEMPORARY RESTRAINING ORDER AND DISMISSING BILL OF COMPLAINT—Filed June 11, 1945

This cause coming on to be heard on the 24th day of May, 1945, upon the motion of J. Tom Watson, Attorney General of the State of Florida, one of the defendants, to dismiss the complaint, the Court having considered the same, as

well as the argument and briefs of counsel for the respective parties, and having taken the cause under advisement, being now advised in the premises, is of the opinion that the said motion should be, and the same is hereby, sustained.

The objection of the Attorney General to the filing of an affidavit by the plaintiffs and certified copies of certain suits filed by the Attorney General and pending in the state courts, is overruled.

The temporary restraining order heretofore entered herein is dissolved, and the complaint is hereby dismissed, with costs against the plaintiffs.

Done, Ordered, Adjudged, and Decreed at Tampa, Florida, this 11th day of June, 1945 at 11:15 o'clock A. M.

Curtis L. Waller, U. S. Circuit Judge; William J. Barker, U. S. District Judge; Dozier A. Devane, U. S. District Judge.

[fol. 239] In United States District Court

Petition for Appeal Under Section 266, Judicial Code, U. S. C. A. Title 28, Section 380, From Final Decree Dissolving Preliminary Injunction and Dismissing Bill of Complaint—Filed August 11, 1945

Come now American Federation of Labor; Metal Trades Department, A. F. of L.; Florida State Federation of Labor; International Association of Machinists and Local Unions Nos. 570 and 731 thereof; International Brotherhood of Electrical Workers and Local Unions Nos. B-108 and 177 thereof; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America and local unions Nos. 433 and 199 thereof; International Union of Operating Engineers and Local Unions Nos. 925 and 673 thereof; International Association of Sheet Metal Workers and Local Unions Nos. 57 and 435 thereof; United Association of Journeymen, Plumbers and Steamfitters of America and Canada and Local Unions Nos. 766 and 234 thereof; United Brotherhood of Carpenters and Joiners of America and local union No. 696 thereof, and Carpenters District Council of Jacksonville and Vicinity; Brotherhood of Painters, Decorators and Paperhangers of America and local Unions Nos. 88 and 164 thereof; International Hod Carriers, Builders and Common Laborers Union of America and Local

Unions Nos. 1207 and 647 thereof; International Brotherhood of Blacksmiths, Drop Forgers and Helpers of America and Local Unions Nos. 141 and 96 thereof; International Association of Bridge and Structural Ironworkers of America and Local Unions Nos. 397 and 597 thereof; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Local Unions Nos. 79 and [fol. 240] 613 thereof; International Federation of Technical Engineers, Architects and Draftmen's Unions and Local Union No. 98 thereof; Cigar Makers' International Union of America; International Brotherhood of Paper Makers; International Brotherhood of Pulp, Sulphite and Paper Mill Workers of the United States and Canada; Bricklayers, Masons and Plasterers International Union of America and Local Union No. 3 thereof; Metal Polishers, Buffers, Platers and Helpers, International Union and Local Union No. 105 thereof; International Association of Heat and Frost Insulators and Abestos Workers and Local Union No. 67 thereof; Hotel and Restaurant Employees International Alliance and Bartenders International League of America and Local Union No. 153 thereof; Office Employees Union No. 23,133; Office Employees Union No. 22,222; E. M. Samples, individually and as President of the Local Union No. 88, affiliated with the Brotherhood of Painters, Decorators and Paperhangers of America; R. M. Fisher, individually and as President of Local Union No. 766, affiliated with the United Association of Journeymen, Plumbers and Steamfitters of America and Canada; O. R. Suhl, individually and as member of Executive Board, Local Union No. 234, affiliated with the United Association of Journeymen, Plumbers and Steamfitters of America and Canada; McCloskey & Company; R. J. Goule, d b a Gould Welding and Erecting Company; Tampa, Florida Brewery, Inc., Plaintiffs in the above cause, and appeal from the final order or decree of the statutory court convoked under Section 266 of the Judicial Code, entered on the 11th day of June, 1945, and pray an appeal therefrom to the Supreme Court of the United States.

Wherefore, in order that the plaintiffs may obtain relief in the premises, for opportunity to show the errors complained of, pray that they may be allowed said appeal agreeable with the statutes and rules of the Court in such case made

and provided, and that proper orders touching the security required of them be made.

Joseph A. Padway, Herbert S. Thatcher, 736 Bowen Building, Washington, 5, D. C.; Edwin C. Coffee, Law Exchange Building, Jacksonville, 2, Florida; [fol. 241] J. Dress Pannell, 206 Brotherhood Building, Harrisburg, Pennsylvania; Pat Whitaker, Tom Whitaker, Tampa Gas Building, Tampa, Florida. Pat Whitaker, Counsel for Plaintiffs.

In United States District Court

Assignment of Errors—Filed August 11, 1945

Come now American Federation of Labor; Metal Trades Department, A. F. of L.; Florida State Federation of Labor; International Association of Machinists and Local Unions Nos. 570 and 731 thereof; International Brotherhood of Electrical Workers and Local Unions Nos. B-108 and 177 thereof; International Brotherhood of Boiler Makers, Iron Shipbuilders and Helpers of America and Local Unions Nos. 433 and 199 thereof; International Union of Operating Engineers and Local Unions Nos. 925 and 673 thereof; International Association of Sheet Metal Workers and Local Unions No. 57 and 435 thereof; United Association of Journeymen Plumbers and Steamfitters of America and Canada and Local Unions Nos. 766 and 234 thereof; United Brotherhood of Carpenters and Joiners of America and Local Union No. 696 thereof and Carpenters District Council of Jacksonville and Vicinity; Brotherhood of Painters, Decorators and Paper Hangers of America and Local Unions Nos. 88 and 164 thereof; International Hod Carriers, Builders and Common Laborers Union of America and Local Union Nos. 1207 and 647 thereof; International Brotherhood of Blacksmiths, Drop Forgers and Helpers of America and Local Unions Nos. 141 and 96 thereof; International Association of Bridge and Structural Iron Workers of America and Local Unions Nos. 397 and 597 thereof; [fol. 242] International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Local Unions Nos. 79 and 613 thereof; International Federation of Technical Engineers, Architects and Draftsmen's Unions

and Local Union No. 98 thereof; Cigar Makers' International Union of America; International Brotherhood of Paper Makers; International Brotherhood of Pulp Sulphate and Paper Mill Workers of the United States and Canada; Bricklayers, Masons and Plasterers International Union of America and Local Union No. 3 thereof; Metal Polishers, Buffers, Platers and Helpers International Union and Local Union No. 105 thereof; International Association of Heat and Frost Insulators and Asbestos Workers and Local Union No. 67 thereof; Hotel and Restaurant Employees International Alliance and Bartenders International League of America and Local Union No. 153 thereof; Office Employees Union No. 23133; Office Employees Union No. 22,222; E. M. Samples, individually and as President of Local Union No. 88, Affiliated with the Brotherhood of Painters, Decorators and Paperhangers of America; R. M. Fisher; individually and as President of Local Union No. 766, Affiliated with United Association of Journeymen, Plumbers and Steamfitters of America and Canada; O. R. Suhl, individually and as a member of the Executive Board, Local Union No. 234, affiliated with the United Association of Journeymen, Plumbers and Steamfitters of America and Canada, McCloskey & Company; R. J. Gould, d/b/a Gould Welding & Erecting Company; Tampa, Florida Brewery, Inc., plaintiffs in this cause, and filed the following Assignment of Errors upon which they will rely in the prosecution of the appeal from the final decree made and entered in this cause on the 11th day of June, 1945, and say that the Court erred in the following respects:

First Assignment of Error:

The Court erred in entering its order on 11th day of June, 1945, dissolving the temporary restraining order theretofore granted.

Second Assignment of Error:

The Court erred in entering its order on the 11th day of June, 1945, dismissing the bill of complaint.

Third Assignment of Error:

The Court erred in its conclusion of law numbered 4 that the amendment to Article 12 of the Declaration of

[fols. 243-253] Rights of the State of Florida is not in violation of any provision of the Federal Constitution.

Fourth Assignment of Error:

The Court erred in its conclusion of law numbered 5 holding that the said amendment to the Declaration of Rights of the State of Florida is an appropriate exercise of the police power of the State of Florida.

Fifth Assognment of Error:

The Court erred in its conclusion of law numbered 5 as follows: "It does not appear on the face of the amendment or on the face of the complaint that said amendment collides with any statute of the United States regarding labor in interstate commerce, but without deciding that no situation could arise which would result in conflict between Federal statutes and the said constitutional amendment, we find that such situations are not exhibited herein and that no case is made out for the granting of any injunction against the defendants, or either of them, even if it be conceded that a three-judge court has the authority to enjoin corporate or individual defendants who are not officers of the State nor charged with the enforcement or execution of the constitutional amendment in question."

Sixth Assignment of Error:

The Court erred in denying plaintiffs' application for temporary injunction.

Joseph A. Padway, Herbert S. Thatcher, 736 Bowen Bldg., Washington, 5, D. C.; Edwin C. Coffee, Law Exchange Building, Jacksonville, 2, Flegida; J. Dress Pannell, 206 Brotherhood Building, Harrisburg, Pennsylvania; Pat Whitaker, Tom Whitaker, Tampa Gas Building, Tampa, Florida; Pat Whitaker, Counsel for Plaintiffs.

[fol. 254] In United States District Court

Order Allowing Appeal—Entered August 11, 1945

This cause coming on this day to be heard upon the petition filed by American Federation of Labor; Metal Trades Department, A. F. of L.; Florida State Federation of

Labor; International Association of Machinists and Local Unions Nos. 570 and 731 thereof; International Brotherhood of Electrical Workers and Local Unions Nos. B-108 and 177 thereof; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America and Local Unions Nos. 433 and 199 thereof; International Union of Operating Engineers and Local Unions Nos. 925 and 673 thereof; International Association of Sheet Metal Workers and Local Unions No. 57 and 435 thereof; United Association of Journeymen Plumbers and Steamfitters of America and Canada and Local Unions Nos. 766 and 234 thereof; United Brotherhood of Carpenters and Joiners of America and Local Union No. 696 thereof and Carpenters District Council of Jacksonville and Vicinity; Brotherhood of Painters, Decorators and Paperhangers of America and Local Unions Nos. 88 and 164 thereof; International Hod Carriers, Builders and Common Laborers Union of America and Local Unions Nos. 1207 and 647 thereof; International Brotherhood of Blacksmiths Drop Forgers and Helpers of America and Local Unions Nos. 141 and 96 thereof; International Association of Bridge and Structural Iron Workers of America and Local Unions No. 397 and 597 thereof; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Local Unions Nos. 79 and 613 thereof; International Federation of Technical Engineers, Architects and Draftsmen's Unions and Local Union 98 thereof; Cigarmakers' International Union of America; International Brotherhood of Paper Makers; In-[fol. 256] ternational Brotherhood of Pulp, Sulphite and Paper-Mill Workers of the United States and Canada; Bricklayers, Masons and Plasterers, International Union of America and Local Union No. 3 thereof; Metal Polishers, Buffers, Platers and Helpers International Union and Local Union No. 105 thereof; International Association of Heat and Frost Insulators and Asbestos Workers and Local Union No. 67 thereof; Hotel and Restaurant Employees International Alliance and Bartenders International League of America and Local Union No. 153 thereof; Office Employees Union No. 23,133; Office Employees Union No. 22,222; E. M. Samples individually and as President of Local Union No. 88, affiliated with the Brotherhood of Painters, Decorators and Paper Hangers of America; R. M. Fisher, individually and as President of Local Union No. 766, affiliated with the United Association of Journeymen,

Plumbers and Steamfitters of America and Canada; O. R. Suhl, individually and as a member of Exeutive Board, Local Union No. 234 affiliated with United Association of Journeymen, Plumbers and Steamfitters of America and Canada; McCloskey & Company; R. J. Gould, d/b/a Gould Welding and Erecting Company; Tampa, Florida Brewery, Inc., Plaintiffs, for an order allowing an appeal, and it appearing to the Court that there was presented with said petition Assignment of Errors, and a separate typewritten statement particularly describing the basis upon which it is contended the Supreme Court of the United States has jurisdiction on appeal to review the final decree in this cause.

It is, therefore, Ordered, That the appeal prayed for be and the same is hereby allowed and granted to the Supreme of the United States from the final order of decree rendered in this cause on the 11th day of June, 1945, that one of the said plaintiffs is required to enter into a bond with good and sufficient security in the sum of $1500.00 conditioned that the Appellants will prosecute their appeal to effect and [fols. 256-260] answer all costs if they fail to make their appeal good; said bond to be approved by this Court or the Clerk thereof.

Done and Ordered this 11th day of August, 1945.

William J. Barker, District Judge.

Bond on appeal for $1,500.00 approved and filed August 11, 1945 omitted in printing.

[fols. 261-262] Citation in usual form, filed August 11, 1945, omitted in printing.

[fol. 263] In United States District Court

Praecipe for Transcript of Record—Filed August 11, 1945

You will please prepare transcript of record in the above styled case to be filed in the Supreme Court of the United

States, and include in said transcript of record the following papers towit:

1. Bill of Complaint filed February 9, 1945.

2. Motion to amend bill of complaint and order allowing amendment, filed March 12, 1945.

3. Motion to amend and order allowing amendment to bill of complaint, filed May 17, 1945.

[fol. 264] 4. Motion to dismiss bill of complaint filed by the defendant Attorney General, filed February 28, 1945.

5. Motion to dismiss bill of complaint filed by defendant Cigar Manufacturers Association, filed March 2, 1945.

6. Motion to dismiss bill of complaint filed by defendant Tampa Shipbuilding Company, March 3, 1945.

7. Answer filed by defendant, Hugh Culbreath, as Sheriff February 27, 1945.

8. Answer filed by defendant Millard Caldwell as Governor February 24, 1945.

9. Answer filed by defendant J. Rex Farrior, as State Attorney, March 1, 1945.

10. Answer filed by defendant St. Johns River Shipbuilding Company, filed March 16, 1945.

11. Answer filed by defendant Luther W. Cobbey, as County Solicitor, May 17, 1945.

12. Order convoking Three-Judge Court, filed March 19, 1945.

13. Motion for preliminary restraining order filed by plaintiffs on March 17, 1945.

14. Notice of hearing on motion for preliminary restraining order filed March 17, 1945.

15. Proof of service of copy of motion for restraining order filed March 17, 1945.

16. Affidavit of Glenn A. McClung in support of motion for restraining order, filed March 19, 1945.

17. Preliminary restraining order entered by the Court on March 19, 1945.

18. Bond executed by plaintiffs in conformity to Court's order granting preliminary restraining order.

[fol. 265] 19. Notices of hearing filed May 1, 1945.

20. The affidavit of Glenn McClung admitted in evidence at Three-Judge Court hearing on May 24, 1945.

21. All of the certified and exemplified copies of all of the quo warranto proceedings in State Court suits which

were filed and admitted in evidence by the Three-Judge Court on May 24, 1945.

22. The objections and motions to strike affidavit of Glenn McClung filed by the defendant Attorney General on May 25, 1945.

23. The order of dismissal entered by the Three-Judge Court on May 24, 1945, dismissing the Cigar Manufacturers' Association as party defendant.

24. The findings of fact and conclusions of law of the Three-Judge Court, as well as the opinion of said Court, filed June 11, 1945.

25. The order of the Three-Judge Court dissolving temporary restraining order and dismissing bill of complaint, filed June 11, 1945.

26. Petition for appeal filed 11th day of August 1945.

27. Assignment of Errors filed 11th day of August 1945.

28. Jurisdictional statement filed 11th day of August, 1945.

29. Order allowing appeal filed 11th day of August, 1945.

30. Bond for costs filed 11th day of August, 1945.

31. Citation to appear and proof of service thereof filed 11th day of August, 1945.

32. These written directions filed 11th day of Aug. 1945.

33. Statement directing appellants attention to Paragraph 3 of Rule 12.

34. Proof of service upon Appellees of each of the following papers: (1) copy of petition for appeal; (2) copy of [fol. 266] order allowing appeal; (3) copy of assignment of errors; (4) copy of jurisdictional statement; (5) copy of citation; (6) copy of statement directing appellees attention to Paragraph 3 of Rule 12; (7) copy of these written directions.

35. Certificate of Clerk.

Joseph A. Padway, Herbert S. Thatcher, 736 Bowen Bldg., Washington, D. C.; Edwin C. Coffee, Law Exchange Building, Jacksonville 2, Florida; J. Dress Pannell, 206 Brotherhood Building, Harrisburg, Pennsylvania; Pat Whitaker, Tom Whitaker, Tampa Gas Building, Tampa, Florida; Pat Whitaker, Counsel for Plaintiffs.

[fol. 267] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 268-270] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF RECORD TO BE PRINTED—Filed September 24, 1945.

Come now the Appellants and adopt their assignments of error as their statement of points to be relied upon, and represents that the whole of the record as filed is necessary for the consideration of the case.

This 11th day of August, 1945.

Respectfully submitted, Joseph A. Padway, Herbert S. Thatcher, 736 Bowen Building, Washington, 5, D. C.; Edwin C. Coffee, Law Exchange Building, Jacksonville 2, Florida; J. Dress Pannell, 208 Brotherhood Building, Harrisburg, Pennsylvania; Pat Whitaker, Tom Whitaker, Tampa Gas Building, Tampa, Florida; Pat Whitaker, Counsel for Appellants.

[fol. 270a] [File endorsement omitted]

[fol. 271] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—November 13, 1945

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the arguments will be limited to the questions of the jurisdiction of the District Court under Section 266 of the Judicial Code, as amended (28 U. S. C. 380), and its jurisdiction as a court of equity.

Mr. Justice Jackson took no part in the consideration of this question.

Endorsed on Cover: File No. 50151, Southern Florida, D. C. U. S., Term No. 448. American Federation of Labor, Metal Trades Department, A. F. of L., Florida State Federation of Labor, et al., Appellants, vs. J. Tom Watson, as Attorney General of the State of Florida, et al. Filed September 24, 1945. Term No. 449 O. T. 1945.

FILE COPY

Office - Supreme Court, U. S.
FILED
SEP 24 1945
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 448

AMERICAN FEDERATION OF LABOR, METAL TRADES DEPARTMENT, A. F. OF L.; FLORIDA STATE FEDERATION OF LABOR, ET AL.,

Appellants,

vs.

J. TOM WATSON, AS ATTORNEY GENERAL OF THE STATE OF FLORIDA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA

STATEMENT AS TO JURISDICTION

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
EDWARD J. BROWN,
EDWIN C. COFFEE,
J. DRESS PANNELL,
PAT WHITAKER,
TOM WHITAKER,
Counsel for Appellants.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 448

AMERICAN FEDERATION OF LABOR, METAL TRADES DEPARTMENT, A. F. OF L.; FLORIDA STATE FEDERATION OF LABOR, ET AL.,

Appellants,

vs.

J. TOM WATSON, AS ATTORNEY GENERAL OF THE STATE OF FLORIDA, ET AL.

STATEMENT IN SUPPORT OF JURISDICTION

Appellants, in support of the jurisdiction of the Supreme Court of the United States to review the above entitled case on appeal, respectfully show:

A

Statutory Provisions Sustaining Jurisdiction

The jurisdiction of the Supreme Court of the United States upon appeal is invoked under Sections 238 and 266 of the Judicial Code as amended by the Act of February 13, 1925, c. 299, Section 1 (43 Stat. 938) (United States Code Ann., Title 28, Sections 345 and 380). The final decree of the Three-Judge District Court was entered June 11,

1945. Application for appeal is herewith presented on the 11th day of August, 1945.

B

The Law of the State the Validity of Which Is Involved

The law of the State of Florida, involved in this appeal and the validity of which has been upheld by the Three-Judge District Court as not being violative of any law of the United States, is an amendment to Section 12 of the Declaration of Rights of the Constitution of the State of Florida, submitted to the people of the State of Florida for ratification by House Joint Resolution No. 13 of the 1943 regular session of the Legislature of the State of Florida, and ratified by the people of the State of Florida on the 7th day of November, 1944. That portion of the amendment here involved reads as follows:

> "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization; * * *"

C

Nature of Case and Rulings Below

On November 7, 1944, the State of Florida duly adopted the foregoing amendment to its Constitution, the admitted purpose of which amendment is to outlaw existing and future agreements relating to union security, that is, union-shop (commonly termed "closed shop") agreements, maintenance-of-membership agreements, or any other agreement which requires membership in a labor organization as a condition of employment.

Following public and private threats of civil and criminal

prosecutions against labor organizations and employers entering into or continuing to observe non-union security agreements, and following the institution of *quo warranto* proceedings by the Attorney General seeking to revoke the corporate charters of some of the Florida employers who continued to observe the provisions of existing union-security agreements, the appellants herein commenced a proceeding in the District Court of the United States for the Southern District of Florida, Tampa Division, under Section 380 of Title 28, U. S. C. A. (Judicial Code, Section 266 as amended), to enjoin the Attorney General and enforcing the law in question on the grounds of its alleged unconstitutionality.

The appellants are the American Federation of Labor, The Florida State Federation of Labor and various national and local labor organizations operating in the State of Florida who are parties to or are desirous of entering into union security agreements. Other appellants are individual employee members of such organizations and three Florida employers who are parties to such agreements. The respondents and defendants below are the Attorney General and other officials of the State of Florida charged with enforcement of the law in question.

The Complaint, filed in Tampa, Florida, on February 9, 1945, alleged the existence of various union security agreements voluntarily arrived at in the course of collective bargaining, to which agreements various of the appellants were parties. The Complaint asserted the indispensability of such union security agreements to the union appellants as a means of achieving job security, equality of bargaining power, protection of working standards and otherwise of furthering the trade union movement, and to the employers appellants as a means of stabilizing and improving labor relations. The Complaint set forth the acts of the defend-

ants in threatening to terminate said agreements, in preventing the making of such agreements, and the actual bringing of proceedings to terminate such agreements, and also threats of employers who are parties to union security agreements immediately to cancel such agreements because of the threats of the Attorney General and his agents, all of which was alleged to bring about imminent disruption to plaintiffs' organization, disturbance to production, and loss of benefits and protections. It was alleged that the law in question was (1) an impairment of and obstruction to the right of working people to assemble into and function through labor organizations, protected under the first amendment as a civil right, (2) an arbitrary, unreasonable and discriminatory exercise by the State of its police power, unlawfully depriving appellants of existing and future contract rights protected under Article I, Section 10 of the United States Constitution and the Fourteenth Amendment thereto, and (3) in conflict with the laws and policies of the United States as expressed in the National Labor Relations Act and the Norris-LaGuardia Act, and thus in violation of Article VI of the United States Constitution. The complaint prayed for a temporary and permanent injunction.

The District Court granted a temporary restraining order and caused a Three-Judge Court, consisting of Circuit Judge Waller and District Judges Barker and DeVane, to be assembled. The defendants and the Attorney General entered a motion to dismiss. Briefs were submitted, and the case was argued before the Three-Judge Court on the 24th day of May, 1945, the Court considering the case upon the pleadings under the defendants' motion to dismiss. On June 11, 1945, the Court entered an order dissolving the temporary restraining order and dismissing the complaint,

and in connection therewith, made the following findings of fact and conclusions of law:

"FINDINGS OF FACT

1. No facts are put in issue by any answer filed in this cause.

2. All allegations of fact, as distinguished from conclusions of law, contained in the complaint are admitted by the motion of the Attorney General to dismiss, and no factual issues necessary to a decision in this cause are involved.

CONCLUSIONS OF LAW

1. The District Court of the United States has jurisdiction of the controversy under Section 41 (1) of Title 28, U. S. C. A.

2. The District Court of the United States has jurisdiction of the controversy under Section 41 (14) of Title 28 and 43 of Title 8, U. S. C. A.

3. A Three-Judge Court has jurisdiction under Section 380 of Title 28, U. S. C. A.

4. The amendment to Article 12 of the Declaration of Rights of the State of Florida is not in violation of any provision of the Federal Constitution.

5. Said amendment to said Constitution is an appropriate exercise of the police power of the State of Florida.

6. It does not appear on the face of the amendment or on the face of the Complaint that said amendment collides with any statute of the United States, regulating labor in Interstate Commerce, but without deciding that no situations could arise which would result in conflict between Federal statutes and the said constitutional amendment, we

find that such situations are not exhibited herein and that no case is made out for the granting of and injunction against the defendants or either of them, even if it be conceded that a Three-Judge Court has the authority to enjoin cooperate or individual defendants who are not officers of the State nor charged with the enforcement or execution of the constitutional amendment in question.

7. Whether or not the allegations of the Complaint appropriately allege irreparable injury is not necessary to a decision.

The conclusions of the Court are more fully set forth in the opinion attached hereto."

Appellants appeal only from Conclusions of Law numbered 4, 5 and 6.

A copy of the opinion of the Court is attached hereto as Exhibit "A".

D

Substantiality of Questions Involved

Appellants respectfully represent that the questions involved in their appeal to the Supreme Court of the United States are of a substantial nature. This Court has many times stated that an appeal will not be dismissed for want of a substantial Federal question unless the contentions of the appellants are "clearly not debatable and utterly lacking in merit." *Hamilton* v. *Regents of University of California*, 293 U. S. 245, 258.

The law in question operates completely to outlaw, not merely to condition, the making of union-security agreements, and strikes directly at the closed or union shop, forbidding its use in the State under any and all circumstances. In his dissent in *Wallace Corporation* v. *National Labor Relations Board*, 68 S. Ct. 238, Justice Jackson quite

aptly stated that "A closed shop is the ultimate goal of most union endeavor." The State of Florida, without a public need therefor, and with no ascertainable public benefit, has arbitrarily decreed that this goal shall no longer be obtainable. One hundred and fifty years of trade union history and experience have clearly demonstrated that, as is alleged in the complaint, closed-shop agreements constitute the only effective means for working people to obtain and insure (1) job security and protection from employer discrimination, (2) equality of bargaining power with consequent betterment to working conditions and (3) protection of working standards by preventing cutthroat wage competition of non-union employees. Further, the closed shop constitutes the sole means of achieving equality of sacrifice among employees by insuring that all who enjoy union wages and working conditions, obtained after years of struggle and deprivation, share in the cost of such benefits as members of the union rather than as "free riders," and share in the responsibility for obligations under collective bargaining agreements. Not a few employers have found that such agreements result in stability of employment relationships, promotion of harmony and cooperation between employers and employees, and the elimination of jurisdictional strife and discord both in the plant and between rival labor organizations, and are an effective means of increasing production by eliminating suspicion and hostility, and freeing union energies and resources for constructive cooperation rather than defensive sparring. Existing contracts insuring such benefits have been abrogated by fiat of the State, and labor organizations are denied the right to bargain for such agreements in the future. Whether the State can constitutionally outlaw such existing and future agreements is a matter of gravest importance to the fourteen million members of organized labor in this country, as well as to an increasingly large number

of employers throughout the nation. As seen from a recent bulletin issued by the Department of Labor (Bulletin No. 829 of the Bureau of Labor Statistics), almost 75% of the employees in all major industries are now working under some union-security agreement. In Florida alone, as alleged in the complaint, over one hundred thousand employees are working under such agreements. A decision by this Court is vitally necessary to remove the confusion and disruption occasioned by the law in question. It is respectfully submitted that the issue is one fully warranting consideration by the Supreme Court of the United States.

It is appellants' principal contention that the prescriptions under the Florida law of the right voluntarily to enter into such agreements, and the disruption to the orderly, peaceful and traditional functioning of voluntary associations of working people accomplished under the amendment, are entirely unjustified, serve no public purpose and are disproportionately burdensome--that reasonable men, viewing the prohibition in the light of existing circumstances, and with a knowledge of the purpose and function of the union-shop principle in modern industrial society, must and would agree that the law is arbitrary in the extreme and without rational basis. As such, the legislation exceeds the permissible range of State police power as prescribed in such cases as *Nebbia* v. *New York*, 291 U. S. 502; *Home Building and Loan Co.* v. *Blaisdell*, 290 U. S. 398, and *West Coast Hotel* v. *Parrish*, 300 U. S. 379.

The decisions of the United States Supreme Court upholding abrogation by the State of the obligations of existing contracts or state limitation or denial of the right of contract have all rested upon the existence of economic circumstances or conditions serving to justify the restrictions.

It cannot be too strongly emphasized that what is involved in this case is not regulation but prohibition; the State has elected completely to outlaw a traditional and very vital subject matter of collective bargaining. The State asserts that the mere existence of union-security agreements is in some way harmful to the public health, morals, safety or well-being. The State has not attempted to, nor can it, point to conditions which would justify such an assertion; on the contrary, the Complaint alleges a lack of abusive practices or conditions arising out of the use of union-security agreements in the State. Any assertion that union-security agreements in and of themselves are a public menace obviously must rest upon "fanciful conjecture" (*Borden's Farm Products* v. *Baldwin*, 283 U. S. 194) and is "unsupported by anything of substance" (*Liggett* v. *Baldridge*, 278 U. S. 105, 113). Abuses, of course, are possible under union-security agreements as they are possible under any of our institutions. The remedy, however, is to deal with the abuse, not to abolish the institution; killing the patient to cure the cold, as has been done in the present case, has never been considered a reasonable method of approach. Where it is possible to secure the objects sought without impairing essential rights or principles, or without imposing hardship in disproportion to possible benefits, this Court has required the State thus to exercise its police powers. See *House* v. *Mayes*, 219 U. S. 270; cf. *Tolliver* v. *Blizzard*, 143 Ky. 773, 137 S. W. 509. If, as appears from the language of the amendment and as is asserted by the Attorney General, it is safeguarding of the right to work that is the object of the legislation, surely that object can be accomplished by establishing protections in admissions to and expulsions from labor organizations holding union security agreements.

It is important to note, however, that the law, in so far as it affects union security agreements, is not concerned

with nor does it touch upon the right to work taken in the abstract or in an unqualified sense; it deals with the right to work as a non-unionist as distinguished from the right to work as a unionist. The right to work as such, i. e., access to a job under reasonable conditions, is not denied by a union shop agreement if, as is alleged in respect to the union appellants and all other labor organizations in this State, membership is open to all qualified applicants. (Cf. *Integration of Bar Case*, 244 Wis. 8, 11 N. W. (2d) 604.) The amendment seeks to protect and in result protects only the right of an individual to work without joining with his fellow workers for purposes of mutual aid or protection and for purposes of sharing in the sacrifices necessary to bring about the undenied benefits of organization. Surely, the right to work as a non-union member is no higher than the right to work as a unionist in the company of fellow union workers. Yet the State has undertaken to throw its weight and lend its support to the one right only, making it an absolute one. This is discriminatory in itself (see *Lawson* v. *Steele*, 152 U. S. 133) and further evidences the arbitrary nature of the law.

It is respectfully submitted that the questions raised under the Fourteenth Amendment and under Article I, Section 10, of the Federal Constitution are, in themselves, of sufficient substance to warrant this Court to assume jurisdiction. In addition, as is seen from the Complaint, appellants have raised questions of importance respecting possible violations of the First Amendment by reason of the impairment to effective exercise of the rights of assemblage and speech accomplished under the amendment (cf. *Thomas* v. *Collins*, Sup. Ct., No. 14, October Term, 1944) and possible violation of Article VI, Section 2, of the Constitution by reason of the conflict of the amendment with Federal law and policy relating to collective bargaining (cf. *Hill* v. *State*, Sup. Ct., No. 811, October Term, 1944). The prescription of a traditional and frequent subject of

collective bargaining may well be violative of the bargaining guarantees contained in the National Labor Relations Act (see *National Labor Relations Board* v. *Reed & Prince Mfg. Co.*, 118 Fed. (2d) 874, certiorari denied, 313 U. S. 595), and the restraint upon and a handicap to the achievement of an equality of bargaining power between employees and their employer imposed by the amendment will in no small measure frustrate that fundamental objective of both the National Labor Relations Act and the Norris-LaGuardia Act.

The cases which sustain the jurisdiction of the Supreme Court of the United States over this appeal have been set forth in the foregoing discussion. In addition, see *Phillips* v. *United States*, 312 U. S. 246; *Parker* v. *Brown*, 317 U. S. 341; *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U. S. 55, and *Treigle* v. *Acme Homestead Association*, 297 U. S. 189.

Respectfully submitted,

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
EDWARD J. BROWN,
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Washington 5, D. C.
EDWIN C. COFFEE,
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PAT WHITAKER,
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Tampa, Florida.
PAT WHITAKER,
Counsel for Appellants.

EXHIBIT "A"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA, TAMPA DIVISION.

No. 881-Civil

Filed Jun. 11, 1945, Tampa, Fla. Edwin R. Williams, Clerk

AMERICAN FEDERATION OF LABOR, FLORIDA STATE FEDERATION OF LABOR, et al., *Plaintiffs and Representatives of a Class,*

vs.

J. TOM WATSON, as Attorney General of the State of Florida, et al., *Defendants and Representatives of a Class,*

and

TAMPA SHIPBUILDING COMPANY, INC., et al., *Nominal Defendants*

Findings of Fact and Conclusions of Law

FINDINGS OF FACT

1. No facts are put in issue by any answer filed in this cause.

2. All allegations of fact, as distinguished from conclusions of law, contained in the complaint are admitted by the motion of the Attorney General to dismiss, and no factual issues necessary to a decision in this cause are involved.

CONCLUSIONS OF LAW

1. The District Court of the United States has jurisdiction of the controversy under Section 41(1) of Title 28, U. S. C. A.

2. The District Court of the United States has jurisdiction of the controversy under Sections 41(14) of Title 28 and 43 of Title 8, U. S. C. A.

3. A three-judge Court has jurisdiction under Section 380 of Title 28, U. S. C. A.

4. The amendment to Article 12 of the Declaration of Rights of the State of Florida is not in violation of any provision of the Federal Constitution.

5. Said amendment to said constitution is an appropriate exercise of the police power of the State of Florida.

6. It does not appear on the face of the amendment or on the face of the complaint that said amendment collides with any statute of the United States regulating labor in interstate commerce, but without deciding that no situations could arise which would result in conflict between Federal statutes and the said constitutional amendment, we find that such situations are not exhibited herein and that no case is made out for the granting of an injunction against the defendants, or either of them, even if it be conceded that a three-judge Court has the authority to enjoin corporate or individual defendants who are not officers of the State nor charged with the enforcement or execution of the constitutional amendment in question.

7. Whether or not the allegations of the complaint appropriately allege irreparable injury is not necessary to a decision.

The conclusions of the Court are more fully set forth in the opinion attached hereto.

CURTIS L. WALLER,
U. S. Circuit Judge;
WILLIAM J. BARKER,
U. S. District Judge;
DOZIER A. DEVANE,
U. S. District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA, TAMPA DIVISION.

No. 881-Civil

AMERICAN FEDERATION OF LABOR, FLORIDA STATE FEDERATION OF LABOR, *et al., Plaintiffs and Representatives of a Class,*

vs.

J. TOM WATSON, as Attorney General of the State of Florida, et al., *Defendants and Representatives of a Class,*

and

TAMPA SHIPBUILDING COMPANY, INC., et al., *Nominal Defendants*

Before Waller, Circuit Judge, and Barker and DeVane, District Judges.

WALLER, *Circuit Judge:*

The 1943 session of the Legislature submitted to the people of Florida the following amendment as an addition to Section 12 of the Declaration of Rights of their Constitution:

> "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer."

The people, at the General Election of 1944, adopted the proposed amendment.

The American Federation of Labor, other State and national labor unions affiliated therewith, certain individuals suing as such and in their capacities as presidents of certain local unions, and certain corporate and individual employers of labor in Florida, all as plaintiffs and repre-

sentatives of a class, brought suit in the United States District Court for the Southern District of Florida, Tampa Division, against the Attorney General and the Governor, as well as the State Attorney, County Solicitor, and Sheriff of Hillsborough County, as defendants and representatives of a class, and also against certain corporations named as nominal defendants, asserting that said amendment was in conflict with several provisions of the Federal Constitution and statutes and praying temporary and permanent injunctions against the defendants in said suit.

The District Judge granted the temporary restraining order and caused this three-judge court to be assembled.

Jurisdiction of the Federal Court was predicated upon the allegations that the suit arises under Section 10 of Article I, Article VI, and the First and Fourteenth Amendments to the Constitution of the United States as authorized by Section 41(1) of Title 28, U. S. C. A., and that it is also a suit for redress for the deprivation of civil rights as permitted by Section 41(14) of Title 28, and Section 43 of Title 8, U. S. C. A. Jurisdiction of the three-judge Court is asserted under Section 380, Title 28, U. S. C. A.

The motion of the Attorney General of Florida to dismiss presents the legal issues upon which the case has been heard and which form the basis of the controversy, to wit:

I. Whether the allegations of the complaint are sufficient to vest jurisdiction in the District Court of the United States:

(a) as a controversy arising under the Constitution and the laws of the United States involving an amount in excess of $3,000.00 under Section 41(1) of Title 28, U. S. C. A.; or

(b) as a suit for the redress of the deprivation of civil rights under Section 41(14) of Title 28, U. S. C. A., or Section 43 of Title 8, U. S. C. A., under which sections the amount in controversy is not material to a suit; and

(c) Even if the District Court of the United States has jurisdiction under either of the aforementioned sections, whether a case for the convening and con-

sideration of a three-judge Court under Section 380, Title 28, U. S. C. A., has been shown.

II. Whether the amended section of the Constitution of the State of Florida deprives the plaintiffs of any rights under the following provisions of the Constitution and laws of the United States:

(a) Section 10 of Article I of the Federal Constitution, prohibiting any state from passing any law impairing the obligation of contracts;

(b) Article VI of the Federal Constitution, providing that the Constitution, and laws of the United States which are made in pursuance of the Constitution, shall be the supreme law of the land;

(c) The First Amendment of the Constitution of the United States, prohibiting Congress from making any law abridging the freedom of speech or of the press or the right of the people peaceably to assemble and to petition the Government for redress of grievances;

(d) The Fourteenth Amendment, which prohibits any state from making or enforcing any law abridging the privileges or immunities of citizens of the United States or from depriving any person of life, liberty, or property without due process of law or from denying to any person the equal protection of the law;

(e) Sections 161 to 166 of Title 29, U. S. C. A., commonly known as the National Labor Relations Act.

III. Whether or not the allegations of fact in the complaint, as distinguished from conclusions of law, show irreparable injury on the part of the plaintiffs, or either of them.

IV. Whether or not the plaintiffs, or any of them, are entitled to maintain a suit for the deprivation of civil rights under the Constitution and laws of the United States.

V. Whether or not the constitutional amendment is a valid and lawful exercise of the police power reserved to the State under the Constitution.

VI. Whether or not there is any conflict between the provisions of the National Labor Relations Act and said constitutional amendment.

There are certain minor, and more or less collateral, questions as to the propriety or legality of joining certain parties as plaintiffs and making certain other defendants,[1] nominal or otherwise, but in contrast to the importance of the issues presented here it seems unnecessary to give them particular attention. We prefer to come as promptly as possible to the real issues in the case, with the idea of expediting the progress of this case to the Supreme Court, knowing full well that what we here say will not be long remembered.

We are of the opinion that under the allegations of the complaint the United States District Court for the Southern District of Florida, as distinguished from a three-judge Federal District Court, has jurisdiction under the allegation that the suit arises under the Constitution and laws of the United States and where the amount in controversy is required to exceed $3,000.00, exclusive of interest and costs,[2] and that such Court also has jurisdiction of the controversy as a suit to redress alleged deprivation of civil rights under Sections 43 of Title 8 and 41(14) of Title 28, U. S. C. A.

The question of whether or not a three-judge Court has jurisdiction is more difficult. The controlling statute is Section 380 of Title 28, U. S. C. A., which prohibits a single District Judge from entering "an interlocutory injunction sustaining or restraining the enforcement, operation, or execution of any *statute* of a state by restraining the action of any officer of such state in the enforcement or execution of such statute, * * *." (Italics added.) Noth-

[1] Rule 17b of the Federal Rules of Civil Procedure provides:

"That a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States.

[2] See Form 2 of the Federal Rules of Civil Procedure as to allegation of amount in controversy.

ing is said in this statute as to restraining the enforcement of a provision in the *constitution* of a state. There is, of course, a wide distinction between a constitutional amendment, adopted by the people, and a statute passed by the Legislature. A mere majority of the Legislature may enact a statute, with the Governor's approval, but it takes three-fifths of the members of both Houses of the Legislature of Florida even to propose an amendment to the Constitution, and the proposed amendment must then be published in a newspaper in every county of the state for three months before the next general election, and at which it must receive a majority of those voting thereon in order to become a part of the organic law of the state. (Article 17, Section 1, Constitution of the State of Florida.) A state statute is an inferior source of law to that of a state constitution, and cannot stand in opposition to it.

United States District Courts are courts of limited jurisdiction, and particularly is this true of a three-judge Court. It is wholly statutory and all questions as to its jurisdiction must be strictly construed. *Phillips* vs. *United States*, 312 U. S. 246.

Cognizant that a three-judge Court is without jurisdiction to grant an injunction in a case involving a municipal ordinance which is alleged to be unconstitutional[3] and that the same is true where an injunction is sought against a state statute which is not statewide in its scope,[4] we entertain grave doubt as to whether or not we, as a three-judge Court, have jurisdiction of the case here for the reason that the constitutionality of no statute of the State of Florida is involved. Were it not for certain language in the case of *Phillips* vs. *United States*, *supra*, and an appreciation of the fact that the dictum of today may, perhaps, be the law of tomorrow, we would hold that this Court is without jurisdiction. In the *Phillips* case neither the State Constitution nor statutes were under attack, but only the acts of the Governor which had been done under color of general provisions

[3] Ex Parte Collins, 277 U. S. 565.

[4] E. C. *Rorick* v. *Board of Commissioners of Everglades Drainage District*, 307 U. S. 208.

of the Constitution and laws of Oklahoma; however, the Supreme Court said that in order to bring the procedural device of the three-judge Court into play a suit is required "which seeks to interpose the Constitution against the enforcement of a state policy, whether such policy is defined in a State Constitution or in an ordinary statute or through the delegated legislation of an 'administrative board or commission'," although the statute mentions neither state constitutions nor state policies, nevertheless the Court held that the law in reference to the jurisdiction of the three-judge Court could not be liberally construed but could only be construed "as an enactment technical in the strict sense of the term and to be applied as such." The decision inveighed against stretching the three-judge Court statute, meanwhile apparently stretching it to include state constitutions and state policies. As we interpret the language in the *Phillips* case the scope of the three-judge Court statute has been enlarged from an injunction restraining the enforcement of "any statute of a state" to the "enforcement of a state policy, whether such policy is defined in a state constitution or in an ordinary statute," so in conformity to the inharmonious language in the *Phillips* case, quoted above, we hold that a three-judge Court has jurisdiction. We doubt not that the statute ought to have prohibited a single judge from enjoining action under a state constitution, for it seems incongruous that a single judge should be able to enjoin action under a constitutional provision but that he could not do so under a state statute.

The motion to dismiss, admitting all of the facts appropriately alleged in the complaint, but not legal conclusions, presents three important legal questions:

1. Is the Florida constitutional amendment in violation of any provisions of the Federal Constitution?

2. Is the constitutional amendment a valid exercise of the police power of the State of Florida?

3. Is the constitutional amendment in conflict with the provisions of any Federal statutes which were enacted within the power delegated to Congress?

No substantial question of fact is involved requiring the taking of testimony or the making of express findings of facts.

The authority of the United States is supreme on all subjects which the Constitution has committed to it, and a state constitution, like a state statute, must fall if it is contrary to any provisions of the Federal organic law,[5] or if it is in conflict with any provisions of the Federal statutes that were enacted within the scope of the power conferred upon Congress by the Constitution.[6]

The wording of the Florida Constitutional amendment is difficult, but it definitely does not violate the First Amendment by abridging freedom of speech or of the press or of the right of assembly, or the right of petition to the Government for redress. The assaulted amendment undertakes to preserve to employees, in full vigor, the right of collective bargaining. Instead of preventing or abridging the rights of speech, press, assembly, and petition, the amendment seeks to preserve it to those who do not join a labor union as well as to those who do. This amendment has no similarity to anti-picketing statutes or statutes which require the payment of a license by a labor organizer. The amendment is not in violation of the First Amendment to the Federal Constitution. The same is true of the allegations as to its violation of the Fourteenth Amendment. There is no prohibition against a citizen belonging to any union that he chooses, but the prohibition seems to be against requiring membership in the union in order for a citizen to be eligible for work. Under statutes of the United States, such as Section 102, Title 29, U. S. C. A., a citizen is declared to be free to join a union or not, and one of the pur-

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[5] "The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the Court. One's right to life, liberty, and property, free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." Justice Jackson in *Board of Election* v. *Barnett*, 319 U. S. 624.

[6] Article VI, U. S. Constitution; *Panhandle Oil Co.* v. *Mississippi*, 277 U. S. 218.

poses of that statute, as well as the National Labor Relations Act, was to accord to employees full freedom to belong, or not to belong, to a union. The Florida constitutional amendment prohibits no one from joining a union but undertakes to declare that it shall not be a condition precedent to the right to work. It does not deny the labor union member the equal protection of the law, but appears to be designed to give to the non-union worker a protection of law which he had not theretofore enjoyed.

There is no vested right to have the police power of a state remain static. Every contract, involving subject matter that affects the public interest, into which a citizen may enter, is subject to the right of a state to regulate or to prohibit whenever it is deemed by the state to be essential in the public interest, and when it violates no provision of the superior national or state law. Contracts entered into prior to state and Federal prohibition against the manufacture or sale of intoxicating liquor were not held to have been illegally impaired by the adoption of prohibition when the states, and subsequently the nation, deemed prohibition to be in the public interest.

There are general allegations in the complaint as to contracts entered into prior to the amendment and alleged to have been impaired by it, but even if these allegations meet the requirements for definiteness and specificity in order to call forth the injunctive processes of the Court, the question first to be answered would be whether or not the state was without authority in the exercise of its police power to adopt the amendment in question.

There are certain principles relating to the police power of the states so axiomatic as not to need a statement as to their source, that might well be restated here.[7]

1. The United States is a government of limited, enumerated, and delegated powers, having only such authority as has been granted to it by the Constitution or necessarily implied therefrom.

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[7] See discussions in 11 Amer. Jur., Const. Law, Police Power, Sec. 245, *et seq.*

2. In construing a law of the United States we look to see if power has been granted, but in construing a law of the state we look to see if it has been prohibited, realizing that all attributes of the government that have not been surrendered by the adoption of the Federal Constitution and its amendments have been retained by the state.

3. It is fundamental that state laws must yield to the superior force of Federal laws which were passed within the sphere of delegated powers. However, a state law is superseded by a congressional law only to such an extent as the two are inconsistent.

4. An act passed under the police power of a state cannot be cast aside as inconsistent with an act of Congress unless there is an actual repugnancy or a complete taking over of the legislative field by Congress, and the rule has been laid down that a state statute is in conflict with a Federal statute when one may incur the penalty of the Federal statute by obeying the state statute, or vice versa.

5. The police power of a state is very broad and comprehensive and is liberally understood and applied. This principle is so well recognized and the police power is of such elasticity that the principle of *stare decisis* has no application to an exercise of this power. This position is justified, for if it were not thus mistaken decisions might destroy the power of society to protect itself. The state cannot contract away its police power[8] and the Courts cannot decide away that which the state itself cannot contract away.

6. The courts cannot create a new Constitution. Laws and court-made rules of expediency must not be placed above the Constitution.

7. Labor and labor unions are affected with a public interest and are subject to the regulatory power of the states for any reasonable regulation which will not be inconsistent with the Constitution of the United States and statutes enacted within the scope delegated by the Constitution to the Congress.

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[8] *Stone* v. *Mississippi*, 101 U. S. 814.

8. Collective bargaining, self-organization, and other kindred union activities necessarily involve the rights of free speech, freedom of the press, freedom of assembly, and freedom of petition, which may not be denied by state statute or constitution, but we also must recognize that the total of union activity is directed toward economic objectives which involve purely commercial activities and which may be regulated by the state upon any reasonable basis when not in conflict with superior law.

9. The very existence of the state as well as "The security of the social order, the life and health of the citizen, the comfort of existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property," [9] depend upon the police power of that state.

10. "The powers that are not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the states respectively, or to the people." [10] The states existed before the Constitution of the United States, and they possessed the police power before the adoption of that organic document,[11] and that police power was not by the Constitution delegated to the United States, and hence under the Tenth Amendment it is reserved in the states or in the people.

11. There is, in the strict sense, no Federal police power.

12. Rule by the majority is the essence of democracy. Members of a labor union are citizens first and subject to the will of the majority, lawfully exercised, and where that will has been exercised by a direct expression of the people at the polls the result is the fullest exercise of the democratic process and the fullest expression of the source of all political power—the people. "All rights are derived from the purposes of the society in which they exist; above all rights rises duty to the community." (Dissenting opinion of Justice Brandeis in *Duplex Company* v. *Derring*, 254, U. S. 443).

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[9] Slaughterhouse cases, 16 Wall. 36.

[10] Tenth Amendment, Federal Constitution.

[11] *N. Y.* v. *Miln*, 11 Peters (U. S.) 102.

13. The wisdom or lack of wisdom of a state statute or of a provision in a state constitution is not a matter for the courts. The people, through their representatives in the Legislature and through their vote for an amendment to their constitution, have the right to commit folly if they please, provided it is not prohibited by the Federal Constitution or antagonistic to Federal statutes authoritatively enacted concerning the matter involved. "The conditions developed in industry may be such that those engaged in it cannot continue their struggle without danger to the community. But it is not for judges to determine whether such conditions exist, nor is it their function to set the limits of permissible contest and to declare the duties which the new situation demands" (Dissenting opinion of Justice Brandeis in *Duplex Company* v. *Deering, supra*).

14. It is the duty of the court to indulge in the presumption that the amendment is not in conflict with the organic law unless the contrary is clearly made to appear.

A consideration of these fundamental concepts impels the conclusion that the Florida constitutional amendment does not contravene any provision of the Federal Constitution and for aught that now appears it is a valid exercise of the police power of the State of Florida. Definitely labor unions are affected with a public interest as exemplified by the National Labor Relations, the Norris-LaGuardia, and Fair Labor Standards Acts, passed by Congress in and about the regulation of interstate commerce, and by numerous acts by state legislatures regulating labor unions in phases not embraced within the scope of the power of the national congress.

In view of the fact that no labor legislation by Congress has required an employee to belong to a labor union or has made the closed shop mandatory, but on the contrary the Federal public policy in regard to compulsory membership in labor unions is stated in Section 102 of Title 29, U. S. C. A., as follows:

> "* * * the individual unorganized worker is commonly helpless to exercise actual liberty of contract to protect his freedom of labor, and thereby to obtain

> acceptable terms and conditions of employment, wherefore, though *he should be free to decline to associate with his fellows*, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, * * *" (Emphasis supplied.)

and in view of the provisions of the Florida amendment that it shall not be construed to deny or abridge the right of employees by and through a labor union to bargain collectively with an employer, there does not appear to be any provision of the Federal labor regulatory statutes with which the constitutional amendment collides. So long as the right to organize into a union and to bargain collectively is not abridged, there is no denial of freedom of speech, press, assembly, and petition. Whatever was traditionally a part of the process of collective bargaining seems to have been left unabridged by the second clause in the amendment.

The amendment makes it possible for the non-union worker to have "a free ride," that is, to have the benefit of the gains and advantages that have accrued through the planning, the effort, the expense, the struggle, and the influence of the unions, without bearing any of their burdens, but this permissive incidence of poor sportsmanship is not new in the law. A substantial portion of the population in many communities have all the benefits of government, yet pay no taxes. Occasions are not singular when free riders in government are the recipients of its greatest solicitude, and that fact that the law gives an unearned advantage to the dissident or disinterested is but slightly dissimilar to the building of a school house largely from taxes paid by corporations which have no children to educate. This ground of objection was one for the Legislature and the people rather than the courts.

It will be observed that the constitutional amendment is not self-executing and no enforcing legislation has been enacted. No prosecution under a criminal statute is involved, and although the Attorney General contends that a closed shop was illegal under Section 1 of Chapter 4144,

Laws of Florida, Acts of 1893 (Sec. 833.02, Florida Statutes, 1941), nevertheless, it is noted that the Supreme Court of Florida, in the case of *Jetton-Dekle Lumber Company* v. *Mather, et al.*, 43 So. 590, held that the Act "will not be applied to the case of union laborers who strike in order to secure all the labor for themselves," which seems to say that the statute did not prohibit a closed shop. This decision, under *Erie Railroad* v. *Tompkins*, 304 U. S. 64, is binding under the Federal Court.

A three-judge Court cannot be convened merely to prevent a multiplicity of suits in the state courts by the Attorney General against employers of labor. But it does not seem necessary for us to determine whether or not irreparable injury to plaintiffs can result, nor do we here undertake to decide what complications might arise out of the operations of the National Labor Relations Act and the Florida constitutional amendment, but deem it necessary only to say that the Federal Act and the amendment on their face do not appear to be in conflict, and it will be time enough to judge of such conflicts if and when they actually arise. This is not an action for a declaratory judgment but an injunction suit in anticipation of irreparable injury.

From the foregoing it appears that the temporary injunction granted herein should be dissolved and vacated, and the motion of the Attorney General to dismiss the complaint should be sustained.

Let an appropriate order be submitted.

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CHARLES ELMORE CROPLEY
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 448

AMERICAN FEDERATION OF LABOR; METAL TRADES DEPARTMENT, A. F. OF L.; FLORIDA STATE FEDERATION OF LABOR, ET AL.,

Appellants,

vs.

J. TOM WATSON, AS ATTORNEY GENERAL OF THE STATE OF FLORIDA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA

BRIEF FOR APPELLANTS

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
EDWARD J. BROWN,
EDWIN C. COFFEE,
J. DRESS PANNELL,
PAT WHITAKER,
TOM WHITAKER,
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SUPREME COURT OF THE UNITED STATES

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Appellants,

vs.

J. TOM WATSON, AS ATTORNEY GENERAL OF THE STATE OF FLORIDA, ET AL.

BRIEF FOR APPELLANTS

Opinion Below

The opinion of the special three-judge District Court for the Southern District of Florida is reported in 60 F. Supp. 1010, and is also found in the Record at pages 206-218.

Jurisdiction

Appellants, in support of the jurisdiction of the Supreme Court of the United States to review the above entitled case on appeal, respectfully show:

The jurisdiction of the Supreme Court of the United States on this appeal is invoked under Sections 238 and

266 of the Judicial Code as amended by the Act of February 13, 1925, c. 299, Section 1 (43 Stat. 938) (United States Code Ann., Title 28, Sections 345 and 380). The final decree of the three-judge District Court was entered June 11, 1945. Application for appeal herein was presented on the 11th day of August, 1945.

Constitutional and Statutory Provisions Involved

The law of the State of Florida, involved in this appeal and the validity of which has been upheld by the three-judge District Court as not being violative of any law of the United States, is an amendment to Section 12 of the Declaration of Rights of the Constitution of the State of Florida, submitted to the people of the State of Florida for ratification by House Joint Resolution No. 13 of the 1943 regular session of the Legislature of the State of Florida, and ratified by the people of the State of Florida on the 7th day of November, 1944. The amendment reads as follows:

> "Section 12. No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken without just compensation. *The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization;* provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer." (Italics supplied.)

Only the italicized portion of the above amendment is involved in these proceedings.

Statement of the Case

On November 7, 1944, the State of Florida duly adopted the foregoing amendment to its Constitution, the admitted purpose of which amendment was to outlaw existing and future agreements relating to union security, that is, union-shop (commonly termed "closed-shop") agreements, maintenance-of-membership agreements, or any other agreement which requires membership in a labor organization as a condition of employment.

Following public and private threats by the Attorney General of the State, warning labor organizations and employers against continuing or entering into union-security agreements under penalty of civil and criminal prosecution (which threats were followed prior to the hearings below by the actual institution of numerous actions seeking to revoke the charters of corporations continuing to observe their existing union-security agreements, and which threats actually resulted in the cancellation by at least one employer, and threats to cancel by other employers, of such agreements, prior to the hearings below), the appellants herein commenced a proceeding in the District Court of the United States for the Southern District of Florida, Tampa Division, under Section 380 of Title 28 U.S.C. (Judicial Code 266 as amended) to enjoin the Attorney General and other law enforcement officials from enforcing the law in question on the grounds that such law was contrary to and deprived of rights under the Constitution and Laws of the United States.

The appellants (plaintiffs below) are the American Federation of Labor, The Florida State Federation of Labor and various national and local labor organizations operating in the State of Florida who are parties to or are desirous of entering into union-security agreements. Other appellants are individual employee members of such organiza-

tions and three Florida employers who are parties to such agreements (R. 4-8). The respondents (defendants below) are the Attorney General and other officials of the State of Florida charged with enforcement of the law in question (R. 27), together with various employer parties to such agreements who were named as nominal defendants (R. 17).

The complaint, filed in Tampa, Florida, on February 9th, 1945, alleged the existence of various union-security agreements voluntarily arrived at in the course of collective bargaining, to which agreements various of the appellants were parties (R. 17-25). The complaint asserted the indispensability of such union-security agreements to the union appellants and their members as a means of achieving job security, equality of bargaining power, protection of working standards and otherwise of furthering the trade union movement, and to the employer appellants as a means of stabilizing and improving labor relations (R. 11-13, 16). The complaint and supplemental pleadings below set forth the acts of the defendants in threatening to terminate said agreements, in preventing the making of such agreements (R. 32-36; R. 83), and the actual bringing of proceedings to terminate such agreements (R. 55-57; R. 81), and also threats of employers who are parties to union-security agreements immediately to cancel, and actual cancellation of, such agreements because of the threats of the Attorney General and his agents (R. 58-60), all of which was alleged to bring about imminent disruption to plaintiffs' organization, disturbance to production, and loss of benefits and protections. It was alleged that the law in question was (1) an impairment of and obstruction to the right of working people to assemble into and function through labor organizations, protected under the First Amendment as a civil right, (2) an arbitrary, unreasonable and discrimina-

tory exercise by the State of its police power, unlawfully depriving appellants of existing and future contract rights protected under Article 1, Section 10 of the United States Constitution and the Fourteenth Amendment thereto, and (3) in conflict with the laws and policies of the United States as expressed in the National Labor Relations Act and the Norris-LaGuardia Act, and thus in violation of Article VI of the United States Constitution (R. 29-31). The complaint prayed for a temporary and permanent injunction (R. 37).

The defendants and the Attorney General entered motions to dismiss. Plaintiffs applied to the District Court for a temporary restraining order (R. 55) which, after notice (R. 66) and hearing, was granted by the District Court (R. 76), which Court caused a three-judge court, consisting of Circuit Judge Waller and District Judges Barker and DeVane, to be assembled (R. 54). After notice of hearing on plaintiffs' application for an interlocutory injunction (R. 78), briefs were submitted, and the case was argued before the three-judge Court on the 24th day of May, 1945, the Court considering the case upon the pleadings under the defendants' motion to dismiss. On June 11, 1945, the Court entered an order dissolving the temporary restraining order and dismissing the complaint (R. 218), and in connection therewith, made the following findings of fact and conclusions of law (R. 205):

"Findings of Fact

1. No facts are put in issue by any answer filed in this cause.

2. All allegations of fact, as distinguished from conclusions of law, contained in the complaint are admitted by the motion of the Attorney General to dismiss, and no factual issues necessary to a decision in this cause are involved.

Conclusions of Law

1. The District Court of the United States has jurisdiction of the controversy under Section 41(1) of Title 28, U. S. C. A.

2. The District Court of the United States has jurisdiction of the controversy under Section 41 (14) of Title 28 and 43 of Title 8, U. S. C. A.

3. A Three-Judge Court has jurisdiction under Section 380 of Title 28, U. S. C. A.

4. The amendment to Article 12 of the Declaration of Rights of the State of Florida is not in violation of any provision of the Federal Constitution.

5. Said amendment to said Constitution is an appropriate exercise of the police power of the State of Florida.

6. It does not appear on the face of the amendment or on the face of the complaint that said amendment collides with any statute of the United States, regulating labor in Interstate Commerce, but without deciding that no situations could arise which would result in conflict between Federal statutes and the said constitutional amendment, we find that such situations are not exhibited herein and that no case is made out for the granting of and injunction against the defendants or either of them, even if it be conceded that a Three-Judge Court has the authority to enjoin corporate or individual defendants who are not officers of the State nor charged with the enforcement or execution of the constitutional amendment in question.

7. Whether or not the allegations of the complaint appropriately allege irreparable injury is not necessary to a decision.

The conclusions of the Court are more fully set forth in the opinion attached hereto."

Thereafter, on August 11, 1945, appellants petitioned for (R. 219) and by order were allowed an appeal (R. 223) to this Court, which appeal was duly taken and resulted in an order by this Court, dated November 13, 1945, noting probable jurisdiction but limiting arguments "to the question of the jurisdiction of the District Court under Section 266 of the Judicial Code as amended (28 U. S. C. 380), and its jurisdiction as a court of equity" (R. 228).

Specification of Errors to Be Urged

Under the limitation imposed by this Court by its said order of November 13, 1945, in respect to the questions to be presented to this Court, no specific error can be assigned to the Court below, that Court having found (R. 205) that it has jurisdiction of the controversy under Section 41(1) of Title 28, U. S. C. A., and under Sections 41(14) of Title 28 and 43 of Title 8, U. S. C. A., and as a three-judge court under Section 380 of Title 28, U. S. C. A., and that Court having further found that it was not necessary to a decision in the case to determine "whether or not the allegation of the Complaint appropriately alleged irreparable injury," or, in other words, whether that Court had jurisdiction as a court of equity.

ARGUMENT

As heretofore noted, the argument herein is limited to the jurisdictional issues, and this brief will not attempt to discuss in any way the merits of the controversy. For a summary of appellants' principal argument in respect to such merits, this Court is respectfully referred to appellants' printed Statement as to Jurisdiction herein (pages 6

through 10). The questions in this case, as limited by order of this Court, are taken to include:

I. Whether the Court below has jurisdiction as a three-judge court under Section 380 of Title 28, U. S. C.;

II. Whether there is any necessity to allege that the matter in controversy exceeded $3,000 in value, and, if so, whether there are sufficient allegations to that effect; and

III. Whether the pleadings set forth sufficient immediate and irreparable injury to warrant exercise of the jurisdiction of the Court below as a court of equity.

Since the case was heard by the Court below on motion to dismiss, and since that Court found specifically that "no facts are put in issue by any answer filed in this case," and "no factual issues necessary to a decision in this case are involved" (R. 205), the allegations contained in the pleadings and supporting affidavits filed by plaintiffs below must be looked to to see if sufficient is alleged to warrant the Court below taking jurisdiction as a special three-judge Court, and to see if sufficient facts are set forth warranting the District Court to take jurisdiction as a court of equity.

I

The District Court has jurisdiction as a special three-judge court under Section 380 of Title 28, U. C. C.

Section 380 of Title 28 of the Judicial Code states as follows:

"No interlocutory injunction suspending or restraining the enforcement, operation or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute * * * shall be issued or granted by

any justice of the Supreme Court, or by any District Court of the United States, or by any judge thereof, or by any Circuit judge acting as District judge, upon the grounds of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a Circuit or District judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a Circuit judge, and the other two may be either Circuit or District judges, and unless a majority of said three judges shall concur in granting such application."

The complaint herein shows that the Legislature of the State of Florida at its 1943 regular session duly adopted and passed a Joint Resolution proposing and submitting for ratification the amendment involved in this case, and that on November 7, 1944, said amendment was ratified by the people of the State of Florida by a vote of 147,860 for to 122,770 against, and thereupon immediately became effective and operative as a law of the State of Florida and as an amendment to the Constitution of the State of Florida (R. 27-28). The complaint then alleged that the said law was in violation of and deprived of rights granted under (1) the First Amendment as protected against invasion by the State by the Fourteenth Amendment, (2) Article I, Section 10, of the Constitution of the United States, providing that no State shall make laws impairing the obligations of contracts, (3) Article VI of the United States Constitution providing that the laws of the United States shall be the supreme law of the land, and (4) the Fourteenth Amendment protecting as a property right the right freely to contract, and prohibiting denial of the equal protection of the laws (R. 29-31). Finally the complaint alleged that the defendant Attorney General and other law enforcement officials of the State of Florida, under color of said unconstitutional law, were seeking to enforce said unconstitu-

tional law as against said plaintiffs to plaintiffs' irreparable injury (R. 32-36). Plaintiffs sought a temporary and final injunction.

Since appellants are seeking to restrain preliminarily and permanently the enforcement and operation of the Florida constitutional amendment by various law enforcing officials of the State upon the ground of the unconstitutionality of such amendment under the Constitution of the United States, it would appear that the requirements of Section 380 have been fully met (*Sterling* v. *Constantin*, 287 U. S. 378) if a State constitutional amendment can be considered to be included within the term "statute" as used in Section 380.

Appellants have assumed that a constitutional amendment of State-wide application is embraced under the term "statute" as used in Section 380, and have sought temporary and final relief before a three-judge court, in reliance upon the case of *Phillips* v. *United States, et al.*, 312 U. S. 246. That case involved an action brought by the United States of America and others against Phillips, Governor of the State of Oklahoma, to restrain interference by the Governor, acting under general authority of the constitution and various statutes of the State, with the completion of a dam on the Grand River in Oklahoma. An interlocutory injunction was granted and vacated, the Supreme Court finding that the complaint as filed did not impugn the validity of any law of Oklahoma. However, in the course of its discussion relating to the jurisdiction of a three-judge court, this Court laid down the rule which governs such jurisdiction in the following words:

> "To bring this procedural device into play—to dislocate the normal operations of the system of lower federal courts and thereafter to come directly to this Court—requires a suit which seeks to interpose the Constitution against enforcement of a state policy, whether such policy is defined in a state constitution or

> in an ordinary statute or through the delegated legislation of an 'administrative board or commission.' The crux of the business is procedural protection against an improvident state-wide doom by a federal court of a state's legislative policy. This was the aim of Congress and this is the reconciling principle of the cases."

An earlier case decided by the United States Supreme Court is also in point on the question here involved. *In Sterling, Governor of Texas, et al., v. Constantin, et al., supra*, a proceeding was had before a three-judge court, which Court granted an interlocutory injunction against the defendant, Ross S. Sterling, as Governor, and others, who were acting under authority of the State constitution and statutes, restraining them from enforcing certain military or executive orders regulating or restricting the production of oil from complainants' wells. This Court there said:

> "As the validity of provisions of the State Constitution and Statutes, if they could be deemed to authorize the action of the Governor, was challenged, the application for injunction was properly heard by three judges. *Stratton v. St. Louis Southwestern R. Co.*, 282 U. S. 10; 51 S. Ct. 8; 75 L. Ed. 135."

See also *Cox v. McNutt*, 12 Fed. Supp. 355; *Powers Merc. Co. v. Olson*, 7 Fed. Supp. 865.

Counsel for respondents herein place principal reliance for their assertion that a three-judge court as such has no jurisdiction upon the fact that Section 380 uses the word "statute" and makes no reference to "State constitutional amendment". Such an assertion, however, overlooks the fact that it was the obvious object of Congress in enacting Section 380 to prevent undue interference by a Federal District Court with state-wide policy of a soverign State, and that accordingly it would be a clear subversion of Con-

gressional intent to prohibit the issuing of injunctions by a single district judge against enforcement of State-wide legislative policy, while at the same time permitting such injunctions against enforcement of State constitutional policy. This was the reasoning used by the court below in sustaining its jurisdiction as a three judge court (R. 211):

> "We doubt not that the statute ought to have prohibited a single judge from enjoining action under a state constitution, for it seems incongruous that a single judge should be able to enjoin action under a constitutional provision but that he could not do so under a state statute."

Further, the assertion of counsel for respondents forgets the all-inclusive meaning of the word "statute" ascribed to the term when used by Congress relative to Supreme Court appeliate jurisdiction. In *Stevens* v. *Griffith*, 111 U. S. 348, this Court, relying upon *Williams* v. *Bruffy*, 102 U. S. 255, stated as follows:

> "Any enactment to which a State gives the force of law, whether it has gone through the usual stages of legislative proceedings, or been adopted in other modes of expressing the will of the State, is a statute of the State within the meaning of the Acts of Congress touching our appellate jurisdiction."

And it is relevant to observe that constitutional restrictions on improper interference by the "State" with existing contract rights, or other constitutionally protected rights, applies to such interference by State Constitution or by initiative of the people as well as by a law passed by a State Legislature. *Mississippi & M. R. Co.* v. *McClure*, 10 Wall. 511; *Denver* v. *New York Trust Co.*, 187 Fed. 890; *Ex parte Virginia*, 100 U. S. 339.

It is respectfully submitted that the foregoing considerations impel the conclusion that the word "statute" as

used in Section 380 of Title 28 of the Judicial Code includes any rule prescribed by power of the State and expressing the will of the State throughout its borders, regardless of whether that rule is established by act of the State Legislature at a regular or special session, or by the people of the State in a State-wide referendum. Any other construction would nullify the purpose of Section 380 to prevent possible unduly considered abrogation of State policy by the action of a single district judge.

II

It is unnecessary in this case to allege that the matter in controversy exceeds $3,000 in value, but even if it were necessary, there are sufficient allegations to that effect.

A. IT IS UNNECESSARY IN THIS CASE TO ALLEGE THAT THE MATTER IN CONTROVERSY EXCEEDS $3,000 IN VALUE

Paragraph 2 of the complaint alleges specifically that

> "This suit arises under the Constitution and Laws of the United States and is brought to redress and prevent the deprivation, under color of law of the State of Florida, of rights, privileges and immunities secured under the Constitution and Laws of the United States, including Article I, Section 10, Article VI, and the First and Fourteenth Amendments to such Constitution, and Title 29, Sections 151-66 of the U. S. Code, all as hereinafter more fully appears. This Court has jurisdiction under Title 28, Section 41, subsections 1 and 14, U. S. C. A.; also under Title 8, Section 43 of the U. S. Code, and Title 28, Section 380, U. S. C. A., all as hereinafter more fully appears." (R. 3.)

Not only do appellants allege that the present suit was brought under the Civil Rights Act, but the complaint clearly sets forth an infringement of its provisions. As heretofore seen, the substance of the complaint is that the

Attorney General of Florida and other State law enforcement officials, proceeding under color and purported authority of an unconstitutional amendment, seek to deprive plaintiffs of civil and property rights secured to them under the First Amendment, under the Fourteenth Amendment, under Section 10 of Article I and under Article VI, of the United States Constitution.

It has been determined by this Court in *Hague* v. *CIO*, 307 U. S. 496, and in *Douglas* v. *Jeannette*, 63 S. Ct. 877, that "the District Courts of the United States are given jurisdiction by 28 U. S. C., Section 41(14) over suits brought under the Civil Rights Act without the allegation or proof of any jurisdictional amount" where civil or property rights are threatened under color of allegedly unconstitutional State law. The Court below found no trouble in finding that it had jurisdiction under Section 43 of Title 8 and Section 41(14) of Title 28, U. S. C. (R. 219).

B. THE PLEADINGS OF THE COMPLAINT CLEARLY INDICATE THAT THE MATTER IN CONTROVERSY EXCEEDS $3,000 IN VALUE.

The Court below likewise found that, under the pleadings before it, it had jurisdiction under Section 41(1) of Title 28 (R. 209) giving jurisdiction to district courts in cases arising under the Constitution or Laws of the United States where the matter in controversy exceeds $3,000. The allegations as to property damage in excess of $3,000 (also relevant to the question of whether there exists sufficient irreparable injury) are as follows:

> "19. A principal purpose sought to be achieved by the members of labor associations, including members of plaintiff associations and the individual plaintiffs herein, in the exercise of their rights of assembly, speech, press and petition, as hereinbefore alleged, is to secure economic security through the entering into by labor associations of which they are members of such union shop or union security agreements. The secur-

ing of such agreements is a necessary and indispensable concomitant of the assemblage of working people, including the members of plaintiff associations and the individual plaintiffs herein, into labor organizations, and the right of labor associations, including plaintiff associations, to maintain and obtain such agreements, constitutes a necessary and indispensable element of their proper functioning and for the fulfillment of their purposes, as heretofore set forth.

"20. Such union shop or union security agreements and the right to enter into them constitute valuable property and civil rights in plaintiffs, for the following additional reasons: The union shop or union security agreement constitutes the most effective means of obtaining and securing for plaintiff labor organizations, their members, and the individual plaintiffs herein:

(1) Job security and protection from employer discrimination by removal of motives to discharge or demote because of union activity.

(2) Equality of bargaining power, with consequent betterment of working conditions by insuring labor a united front in the contest for a fair share of the joint products of capital and labor.

(3) Protection of working standards by preventing cut-throat wage competition by non-union employees.

(4) Equality of sacrifice by insuring that all who enjoy union wages and working conditions, achieved through years of struggle and deprivation, share in the costs of such benefits as members of the union rather than as 'free riders.'

(5) An increased measure of union responsibility for their obligations under collective bargaining agreements by providing a means of imposing disciplinary action.

(6) Elimination of jurisdictional strife by safeguarding against raids and other disruptive tactics of rival labor organizations, and

(7) Labor-management cooperation by eliminating the suspicion and hostility which often characterizes

the initial stages of employer recognition, thereby freeing union energies and resources for constructive cooperation rather than defensive sparring.

"21. Labor organizations, including plaintiff labor organizations, have for many years in the past and have at the present time large numbers of union shop or union security agreements with various employers in a large number of trades and industries throughout the United States and in the State of Florida. Labor organizations affiliated with plaintiff, Florida State Federation of Labor, and including the plaintiff labor organizations herein, have approximately 500 union shop or union security agreements embracing approximately 100,000 employees of various employers in Florida. Such agreements are with employers engaged in non-agricultural industries, trades and services. Some of these agreements are for one-year periods with automatic renewal clauses for additional year periods. Some of these agreements are for a period of years up to five years, some for the duration of the present war, and others are about to expire in the near future. Such agreements have proved and are proving useful and necessary in the accomplishments of the purposes as enumerated in paragraphs 14 through 19 hereof.[1] In addition, many labor organizations in Florida, affiliated with the plaintiff, American Federation of Labor, or the plaintiff, Florida State Federation of Labor, including many of the plaintiff labor organizations, are seeking and desire to obtain additional union shop or union security agreements with employers in various industries and trades and services throughout the State of Florida." (R. 11-13.)

"27. All of the foregoing activities enumerated in the preceding paragraphs of this complaint, and in particular the obtaining and maintaining of agree-

[1] The phrase "paragraphs 14 through 19 hereof," wherever it appears in the complaint, was amended to read "pagagraphs 14 thru 20 hereof" (R. 40).

ments containing union shop or union security provisions, as carried on by labor organizations and their members and by the plaintiff labor organizations in the present action and individuals represented by such plaintiff labor organizations and individual plaintiffs herein, constitute the only effective means possessed by organized labor to accomplish economic security and otherwise deter the practices of employers which are destructive of public policy and of the interest of wage earners generally and of members of labor organizations and of plaintiff labor organizations herein, and said activities are indispensable concomitants of the right of employees to organize into labor organizations and to bargain collectively with employers and otherwise to advance their mutual interests and welfare,

"28. The plaintiff employers in this case and other employers similarly situated have an interest in the maintaining and obtaining of collective bargaining agreements with labor organizations containing provisions requiring membership in a labor organization as a condition of employment or other provisions relating to union security in that such provisions in collective bargaining agreements with labor organizations have resulted and result in stability of employment relationships, the promotion of harmony and cooperation as between employer and employees, the elimination of strife and discord both within the plant and as between rival labor organizations, the availability of sufficient skilled, competent and experienced artisans of the particular crafts, the stabilization of employees' compensation by the pre-determination of applicable wage rates, the establishment of an effective means of increasing production." (R. 16.)

"39. The contracts hereinabove specifically mentioned, and in particular the union shop provisions thereof, constitute valuable property rights to the plaintiff unions and their members and the individual plaintiffs, as well as to plaintiff, McCloskey & Company, and plaintiff, Tampa Florida Brewery, Inc., such

value being in excess of Three Thousand Dollars exclusive of interest and costs. Under and by virtue of such agreements and the union security provisions thereof, such plaintiffs have realized and are realizing many benefits and advantages, including those enumerated in paragraphs 14 through 19, supra.

"40. The plaintiff, R. J. Gould, doing business as the Gould Welding & Erecting Company, employs approximately 42 employees, all of whom are members in their respective crafts of plaintiffs, United Brotherhood of Carpenters and Joiners of America; Bricklayers, Masons and Plasterers International Union of America, and International Brotherhood of Electrical Workers, and all of which employees have duly designated such organizations as their exclusive representatives for all purposes of collective bargaining. The said plaintiff, R. J. Gould, and the said labor organizations have been since December, 1944, and still are, in the process of negotiating a collective bargaining agreement covering wages, hours and working conditions of the employees employed by said Company. Although such plaintiff and such plaintiff labor organizations are desirous of entering into a union shop agreement, they were and are being prevented from so doing by reason of the said Anti-Labor Amendment, as hereinafter more specifically described." (R. 25.)

The verified motion for temporary restraining order recites the filing of seven quo warranto proceedings by the Attorney General against various corporations having union-security contracts, including four corporations having contracts with various of appellant organizations, which proceedings seek to cancel the corporate charter of such corporations unless the corporations refuse to abide by the union-security provisions of their contracts with the particular labor organizations (R. 55).

Finally, the uncontested affidavit filed by Glenn McClung in support of the application for interlocutory injunction sets forth as follows (R. 80):

> "* * * that if this anti-labor Amendment is made effective it will cause an immediate decline and decrease in the membership of plaintiff organizations and the dues collected from said organizations, which decrease will be far in excess of $3,000.00 and will thereby render the plaintiff organizations financially unable to meet their obligations on the balance of the purchase price, or to continue to defray the expense necessary for the continued maintenance of their properties, thereby jeopardizing their ownership of, as well as their financial ability to continue to defray the necessary maintenance of their properties, which would cause them to sustain a loss greatly in excess of $3,000.00. Deponent further states that if said anti-labor Amendment is made operative by court proceedings, civil or criminal, it will cause such a chaotic condition in the ranks of labor and a loss of faith in the plaintiff union organizations as will result in a decimation of their membership to such extent that the loss of dues now payable to said local plaintiff organizations as well as the national plaintiff organizations, greatly in excess of $3,000.00."

It is submitted that the foregoing allegations showing possible loss to plaintiffs of considerable membership, with consequent loss of revenue, showing impairment of ability to function and to carry out the objectives and purposes of the plaintiff organizations, showing loss of valuable existing and future contract rights, and, indeed, showing a threat to the very existence of the plaintiff organizations if the Amendment in question is made operative or enforced against either party, together with the specific allegation that the matter in controversy exceeds $3,000,[2]

[2] See Form 2 of the Federal Rules of Civil Procedure.

constitute ample allegations as to the amount in controversy. The jurisdictional amount required by the Judicial Code has been held to be present if the future value of the continuing exercise of the right sought to be exercised or the future avoidance of the burden sought to be avoided may be estimated as in excess of $3,000. *Glenwood Light Co.* v. *Mutual Light Co.*, 239 U.S. 121, 126; *Thompson* v. *Thompson*, 226 U.S. 551.

The allegation that the very existence of plaintiff organizations will be threatened is not an idle one. The United States Industrial Commission, set up by the 57th Congress to report on industrial relations, expressly defended the union shop on the ground that the logical result of the non-union shop was destruction of the union.[3] In *Kemp* v. *Division 241*, 255 Ill. 213, 99 N.E. 389, the Supreme Court of Illinois, in denying an injunction against a strike for a closed shop, held that "to deny them the right to determine whether their best interests required that they should be associated in their work only with members of their organization would imperil their very existence."

III

The pleadings indicate sufficient immediate irreparable injury to warrant invoking the jurisdiction of the court below as a court of equity.

The pleadings show as follows:

Following the allegations contained in paragraphs 19, 20, 27 and 28 of the complaint, set forth in connection with Point II above, indicating the purpose, necessity and in-

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[3] The Final Report of the Industrial Commission, H. Docket No. 380, 57th Congress, First Session, Vol. XIX, pp. 815-817.

dispensability of union-shop agreements, the complaint alleges as follows:

"40. The plaintiff, R. J. Gould, doing business as the Gould Welding & Erecting Company, employs approximately 42 employees, all of whom are members in their respective crafts of plaintiffs, United Brotherhood of Carpenters and Joiners of America; Bricklayers, Masons and Plasterers International Union of America, and International Brotherhood of Electrical Workers, and all of which employees have duly designated such organizations as their exclusive representatives for all purposes of collective bargaining. The said plaintiff, R. J. Gould, and the said labor organizations have been since December, 1944, and still are, in the process of negotiating a collective bargaining agreement covering wages, hours and working conditions of the employees employed by said Company. Although such plaintiff and such plaintiff labor organizations are desirous of entering into a union-shop agreement, they were and are being prevented from so doing by reason of the said Anti-Labor Amendment, as hereinafter more specifically described." (R. 25.)

"41. Plaintiff labor organizations are involved in numerous other situations similar to the situation above described with respect to plaintiff, R. J. Gould, in the State of Florida." (R. 26.)

"49. The defendants, J. Tom Watson, as Attorney General of the State of Florida, Millard Caldwell, as Governor of the State of Florida, J. Rex Farrior, as State's Attorney of Hillsborough County, Florida, and Hugh Culbreath, as Sheriff of Hillsborough County, Florida, and each of them, contend that plaintiffs, by observing the provisions of their existing collective bargaining agreements and the provisions of existing constitutions and by-laws relating to union security and requiring membership in a labor organization as a condition of employment, violate said 'Anti-Labor Amendment,' and further contend that said 'Anti-Labor Amendment' prohibits plaintiffs from

entering into or renewing collective bargaining agreements containing any such provisions.

"50. It is the intent and purpose of such defendants to force plaintiffs to comply with said illegal law and to enforce compliance against said plaintiffs by civil and criminal proceedings, and to prevent plaintiffs from realizing the benefits and advantages of their existing contracts and from entering into similar contracts in the future. Such defendants threaten to and will, unless enjoined by this Court, file criminal and civil complaints against and will prosecute the plaintiff labor organizations and the plaintiff employers, their officers and agents, and the individual plaintiffs herein, if they continue to observe the provisions of existing collective bargaining agreements relating to union security or if they attempt to observe the provisions of existing constitutions and by-laws of plaintiff labor organizations referring to union security or if they enter into or renew collective bargaining agreements containing provisions relating to union security or providing that membership in the organization shall be a condition of employment. The acts of such defendants, under color of the alleged law, will work an irreparable injury and damage to labor unions and their members, and to employers, and particularly these plaintiffs, by reason of the loss of present and prospective benefits derived and to be derived from such contracts, as more particularly hereinbefore alleged, and will result in interminable litigation and multiplicity of prosecutions and legal proceedings and will cause widespread disruption to employment relations and a considerable interference with production. Such threatened acts of defendants will further substantially interfere with, impair and destroy operations of the businesses of plaintiff employers and of other employers similarly situated throughout the State, and will cause and result in the disorganization and disintegration of plaintiff labor organizations and others similarly situated.

"51. Specifically, the defendant Attorney General, J. Tom Watson, has threatened to institute immediate proceedings in quo warranto against the defendant, Tampa Shipbuilding Company, the defendant, St. Johns River Shipbuilding Company, the defendant, National Container Corporation, the plaintiff, McCloskey & Company, the plaintiff, Tampa Florida Brewery, Inc., and other employer corporations with whom plaintiff labor organizations now have collective bargaining agreements containing union shop provisions, seeking to annul and cancel the corporate franchise under which said corporations are now functioning by grant or privilege from the State of Florida to do business in Florida unless said corporations immediately desist from observing the provisions of such existing collective bargaining agreements requiring membership in plaintiff labor organizations as a condition of employment. Said defendant, J. Tom Watson, has prepared and will, unless restrained by this Court, immediately file said proceedings in quo warranto against said employers. The refusal or failure of any of such employers to enforce said provisions in said contracts relating to union security in said existing collective bargaining agreements will cause immediate and irreparable injury and damage to plaintiff labor organizations who are parties to such existing agreements, and will cause immediate and irreparable injury and damage to plaintiff, McCloskey & Company, and plaintiff, Tampa Florida Brewery, Inc., as well as other employers similarly situated, in that the benefits and advantages under such agreements will be lost and disruption to production will inevitably result if there is any failure to continue to observe the union security provisions of its existing collective bargaining agreement.

"52. Further, said defendant, J. Tom Watson, has threatened the plaintiff labor organizations, their officers and agents and the individual plaintiffs herein and other labor organizations and officers of labor organizations throughout the State of Florida who are

situated similar to plaintiff organizations with immediate criminal prosecutions under Section 833.01 of the Florida Statutes, 1941, providing for fine and imprisonment for any persons conspiring to violate any law of the State of Florida, unless such plaintiffs and others give up their existing agreements in respect to union security and unless they refrain from entering into or renewing any such agreements, and said J. Tom Watson, as Attorney General, is giving effect to said threats at the present time in the following manner: He has publicly, through the press of Florida, as the head of all law enforcement agencies in this State, issued orders to all prosecuting attorneys, sheriffs, constable and other law enforcement officers in the State to institute immediately prosecutions in court against all persons, including these plaintiffs, who are violating said 'Anti-Labor Amendment' by recognizing or entering into collective bargaining agreements with provisions as hereinabove set out, and said officers are now preparing such criminal proceedings to be instituted against plaintiffs and all other persons similarly situated to plaintiffs who are not abiding by said 'Anti-Labor Amendment,' and the said J. Tom Watson is himself preparing warrants which will be immediately issued and served upon all such persons, including plaintiffs, who are refusing to comply with said 'Anti-Labor Amendment.' Such threats have resulted and will result, unless restrained, in loss of personal, civil and property rights by plaintiffs, including the benefits of assemblage, liberty of contract, and the advantages and benefits of existing and recognized contracts, and in loss of present and prospective members by plaintiff labor organizations, and such threats imperil the security of plaintiff labor organizations and the security of their members.

"53. The said J. Tom Watson, as Attorney General, has also, through the press of Florida, threatened to prosecute all persons, including the plaintiffs to this cause, who execute or renew any collective bargaining agreement containing a provision requiring member-

ship in a union as a condition of employment; by reason of said threats said plaintiff, J. R. Gould, has been prevented from entering into collective bargaining agreements containing union security provisions, although anxious and willing so to do, but unless he is permitted to enter into such contracts he will suffer irreparable damage and injury from loss of benefits and advantages under such contracts by reason of threatened concerted action by his employees for failure to enter into such agreement. Further, in respect to said plaintiff, J. R. Gould, he has suffered and is suffering irreparable injury and damage by reason of his inability to enter into a union shop agreement because of said threats of said defendant, J. Tom Watson, as Attorney General of Florida, due to the fact that he is and has been unable to secure sufficient skilled labor properly to conduct his business, and unless said defendant, J. Tom Watson, as Attorney General of Florida, is restrained from enforcing said invalid law he will continue to suffer irreparable damage and injury. Unless this Honorable Court enjoins and restrains said J. Tom Watson, as Attorney General, and other defendant law enforcement officials, from enforcing said law, the plaintiffs herein will be immediately subjected to criminal prosecutions and injunction suits, and wholesale prosecutions, and injunction suits will be instituted against other persons in the State of Florida similarly situated to plaintiffs. All of such suits are in the course of preparation at this time and will be immediately filed, and there will result a great multiplicity of law suits.

"54. Enforcement of the said 'Anti-Labor Amendment' by the said defendant prosecuting officials will deprive the plaintiff labor organizations of the benefits, advantages and privilegs of mutual association and assembly and of the mutual obligations heretofore assumed by members of such plaintiff organizations in such mutual association and assembly. It would deprive such plaintiff labor organizations and all the members of such plaintiffs of the benefits, rights, privi-

leges and immunities heretofore received and now possessed under contracts made by and with plaintiff labor organizations and by and among the members thereof, and will prevent such plaintiffs and all members of such plaintiffs from engaging in all of the activities hereinbefore set forth and from securing the benefits, objectives and purposes of their mutual association and assembly as hereinabove set forth, and will irreparably injure and eventually destroy the plaintiff Labor organizations. The acts of said defendants as threatened and intended aforesaid will interfere with and prevent and cause a cessation and denial of collective bargaining relations between the plaintiff labor organizations and employers and interfere with and prevent the renewal and continuance of contracts and agreements now in effect between the said plaintiffs and employers and others, including contracts which by their terms provide for automatic renewal. The filing of criminal complaints against or the prosecuting of one or more of plaintiffs, or one or more members or officers of plaintiff unincorporated associations will, during the pendency of such prosecution, work all of the said irreparable injury and damage to all of the plaintiffs and all of the members of the plaintiff unincorporated associations and all of the members of labor unions in the State of Florida." (R. 32-36.)

In addition, in respect to the question of irreparable injury, the motion for restraining order filed with the District Court on March 17, 1945, contains the following sworn allegations, uncontested by any of the defendants:

"Now come plaintiffs in the above cause, by their undersigned attorneys, and respectfully show unto the court that since the filing of the bill of complaint in the above cause, the defendant, J. Tom Watson, as Attorney General of the State of Florida, has filed in the Circuit Court of Bay County, Florida, a quo warranto proceeding against J. A. Jones Construction

Company, a corporation, and has filed in the Circuit Court of Duval County a similar proceeding against the St. Johns River Shipbuilding Company, a corporation, and also filed in the same court a similar proceeding against National Container Corporation, and filed in the same court a similar proceeding against Merrill-Stevens Dry Dock & Repair Company, a corporation, and also filed in the Circuit Court of Dade County, Florida, a similar proceeding against Miami Shipbuilding Company, a corporation, and has also filed in the Circuit Court of Hillsborough County, Florida, a similar proceeding against the Tampa Shipbuilding Company, and also filed in the same court a similar proceeding against A. Santaella & Co., Inc., Salvador Rodriguez, Inc., Corrall-Wodiska Y Ca., J. W. Roberts & Son, Inc.; Cuesta, Rey & Co., Grandiaz, Annis & Co., Inc., Morgan Cigar Company, Inc., and Jose Arange & Co., and has also applied to the Supreme Court of Florida for a writ of quo warranto against the Dade County Roofing Company, wherein he is seeking to have immediately made effective the State Constitutional Amendment here under attack, which said Amendment is, in fact, illegal and void and of no effect, all of which respondents in said State court cases, with the possible exception of St. Johns River Shipbuilding Company, are co-operating with the petitioner therein, J. Tom Watson, as Attorney General as aforesaid, and there will not be any bona fide defense made in said suits, or most of them, but that said proceedings will go practically undefended, and that the suits, or most of them, in fact, have the co-operative assistance of respondents in having the prayers contained in the petitions filed by the Attorney General sustained and granted, to the effect that the Constitutional Amendment here under attack is legal and valid and the closed shop provisions of the contracts invalidated; * * *" (R. 55.)

* * * * * * *

" * * * that the invalidation of said provisions of said contracts in said proceedings brought by the

Attorney General in the State courts will cause chaos and confusion among the employees, not only those embraced in the contracts of said respondents to said cases, but thousands of other employees of other companies which have similar union contracts in the State of Florida, and who are either plaintiffs in this cause or are represented by the plaintiffs; that unless enjoined and restrained by this Honorable Court, the plaintiffs' contract and property rights sought to be preserved in this proceeding will be immediately impaired and destroyed, and as a result, utter confusion created in the ranks of plaintiffs, as well as labor generally in the State of Florida; * * *" (R. 57.)

* * * * * * *

"Plaintiffs further show unto the court that in connection with the State court suit brought by the Attorney General against said National Container Corporation, the said National Container Corporation has already served notice by letter upon plaintiffs in this cause, and other interested unions represented by the plaintiffs as a class, since the institution of this suit, that it is going to disregard the closed shop provision of the existing contract, copy of said letter being attached hereto, marked Exhibit 'A' and made a part hereof * * *" (R. 58.)

Exhibit "A", attached to such motion to dismiss, after referring to the union-shop contract between the defendant National Container Corporation and various of the plaintiff corporations and to the Amendment involved in this case, states as follows:

"By reason of the adoption of this amendment, and its inclusion in the Constitution of Florida, it is our duty to suspend the operation of the clause in your contract above referred to and we accordingly give you notice of the suspension of this clause in your contract.

"You are, of course, aware that quo warranto proceedings have been instituted against us under this amendment, copies of writs and complaints have been

furnished to you, and that other suits have been brought for the purpose of establishing the validity of the above referred to constitutional amendment. This notice of suspension, therefore, will be in force until such time as a Court of Last Resort shall determine the constitutionality of this amendment.

Yours very truly, National Container Corporation, by Samuel Kipnis, President." (R. 60.)

The affidavit filed by Glenn McClung in behalf of plaintiffs in their application for an interlocutory injunction further states as follows:

"* * * that defendant, J. Tom Watson, since the filing of this suit has instituted seven quo warranto proceedings in various state courts of Florida, seeking to make effective said anti-labor Amendment, and at the time of the granting of preliminary restraining order in this cause, the said defendant, J. Tom Watson, as Attorney General of the State of Florida, had prepared and was on the verge of filing a large number of similar proceedings against other employers; deponent files herewith certified copies of said seven suits so instituted by defendant J. Tom Watson in said state courts, and makes the same part of this affidavit; that the said defendant, J. Tom Watson, has been quoted in the press of the State continually since the adoption of said anti-labor Amendment as threatening labor and labor unions, as well as employees and employers with criminal and civil proceedings if they continue to recognize in any way the closed shop provisions in existing contracts, or enter into any extension or renewals, or any new contracts containing said provision, and the said J. Tom Watson was preparing to file not only a vast number of other civil proceedings at the time of the granting of the preliminary restraining order by this court, but was also preparing to make effective his threats published in the press of the state to institute criminal proceedings by instituting a large number of criminal cases against plaintiff unions and the members thereof, as well as

employers who have entered into contracts with plaintiff unions and their members, recognizing the closed shop provision of their contract. Deponent attaches hereto some of the clippings from some of the papers of this state, quoting the said defendant, J. Tom Watson, and makes the same a part of this affidavit, and these clippings are but illustrative of the said threats showing the contemplated action of the said J. Tom Watson not only as threatening to take criminal and civil action against plaintiff unions and their members, as well as employers under contract with them recognizing the closed shop provision, but that the said J. Tom Watson was actually taking steps to put into effect all of said threats at the time of the granting of the preliminary restraining order by this Honorable Court; that the filing of said multiplicity of criminal and civil suits by the said J. Tom Watson against plaintiff unions and the members thereof, and employers under contract with plaintiff unions who continue to recognize the closed shop provisions, will deprive these plaintiffs of their civil and property rights, and cause them to suffer irreparable injury impossible of money admeasurement, and the filing of said multiplicity of suits, criminal and civil, will practically destroy and have the effect of undermining and jeopardizing the very continued existence of plaintiff labor unions, and will cause both the labor unions and the members thereof, as well as the employers to suffer irreparable injury and that the same will be done and accomplished by the said defendant, J. Tom Watson, unless enjoined by this Honorable Court." (R. 81.)

A sample of the newspaper clippings attached is as follows:

"Tallahassee, Jan. 10, (AP)—Attorney General Tom Watson today called on Florida workers and employers to recognize the anti-closed shop Amendment as part of the fundamental law 'until some superior authority has assumed, or issued, a contrary order or directive.'

"He said both employers and employes now have

a constitutional duty to say to any group that the right to work in Florida cannot be "denied or abridged because of membership or non-membership in any union."

"'We must desist, all of us now, in taking courses of least resistance demanded by either employer, bargaining agent, business agent, or group of employees; and must refuse to subject ourselves to liability for the violation for constitutional rights, or punishment for infractions of criminal law.'" (R. 83.)

The foregoing allegations, together with those allegations quoted in connection with Argument II, *supra*, comprise the essential allegations upon the basis of which it must be determined whether the Court below had jurisdiction as a court of equity.

It is fully recognized that, in order to invoke the equitable jurisdiction of a Federal district court, the injury to property or civil rights threatened by State action must appear to be not only irreparable, but to be "both great and immediate"—that equitable relief "will be withheld if sought on slight or inconsequential grounds." *Douglas v. Jeannette*, *supra*; *Watson v. Buck*, 313 U. S. 387. That the threatened injury to appellants, as labor organizations and as members of labor organizations on the one hand, and as employers on the other, is (1) irreparable, (2) great, and (3) immediate, is, it is respectfully submitted, amply indicated by the allegations above set forth.

(1) The injury to appellants is *irreparable* because no judgment for money damages could possibly compensate appellant labor organizations for the loss of protection and security which will be occasioned if they are deprived of the benefit of union-security provisions under existing and future collective bargaining agreements. Indeed, the complaint alleges that the very existence of plaintiff labor organizations is threatened by loss of such provisions under the Amendment. Similarly, no monetary award would be

sufficient to compensate the employer appellants for the loss of stability in their relationships with their employees, the loss of a source for skilled and experienced help, and the loss of a means of achieving harmony and cooperation within their plant which enforcement of the Amendment would entail.

(2) The injury to appellant labor organizations that will result if the Amendment is enforced is *great* because, as shown by the pleadings, loss of existing and future contract provisions for union security means loss of membership, loss of equality of bargaining power, loss of protections against cutthroat wage competition and against employer practices which are contrary to the interests of wage earners—means ultimate destruction of appellant organizations. Mr. Justice Jackson, in the recent case of *Wallace Corporation* v. *National Labor Relations Board*, 68 S. Ct. 238, quite aptly stated that "A closed shop is the ultimate goal of most union endeavor." Surely, loss of the one tried and tested means of obtaining for its members job security, equality of bargaining power and protection of working standards and other benefits set forth in paragraphs 20 and 27 of the complaint is one which is not slight or inconsequential. Not only will existing protections and benefits be nullified, but the right of labor organizations to seek such protections and benefits for their members in future negotiations and after organization has been extended will be permanently denied. The inconvenience, money loss, or even sacrifice of liberty through imprisonment, which might be occasioned individuals by possible criminal proceedings will be as nothing compared to the blow inflicted upon the entire labor movement in the State of Florida were the Amendment to be made operative. It is concerning the loss of protections and benefits obtainable only under union-security agreements that appellant labor organizations complain—an

injury far beyond that incidental to a criminal prosecution, and far beyond that which will be suffered through depletion of finances. Assuredly, no case could be presented to this Court by any labor organization involving threatened injury which is "greater" than that involved in the present case; the ability to achieve union security through the processes of collective bargaining, denied by the Amendment in question, goes to the very existence of labor organizations, to their reason for being, to their ability to function in the interests of their members.

(3) Finally, that loss of the benefits and protections of existing and future union-security agreements is *immediately* threatened by the actions of the Attorney General is demonstrated as follows:

1. The pleadings above set forth show that the Attorney General has made actual threats to begin great numbers of criminal prosecutions and civil suits for enforcement against employers and labor organizations continuing to observe or to enter into union-security agreements, and to commence such prosecutions in the immediate future. The pleadings further show that the manner in which such threats were made was calculated to reach all persons who read the newspapers or listen to the radio. Such threats thus gave unequivocal public notice to all employers and to all labor organizations in the State that they will expose themselves to civil prosecutions and suits for damages if they continue to observe union-security agreements or enter into such agreements in the future. The nature of these threats was such as to give reasonable certainty not only that the Attorney General intended to carry them out, but that numerous employers with whom appellant labor organizations have existing union-security agreements on the one hand would thereby be coerced into refusing to observe such agreements, and on the other that other employers about to

enter into or renew such agreements would, because of such threats, refuse to do so, all to appellant labor organizations' great injury and with consequences, *inter alia*, such as those set forth above in paragraph 51 of the complaint.

In *Watson* v. *Buck, supra*, it was held in respect to the sufficiency of threats of prosecution by law enforcement officers that:

> "A general statement that an officer stands ready to perform his duty falls far short of such a threat as would warrant the intervention of equity."

This Court indicated, however, in language applicable to the present case, as follows:

> "For such a general statement is not the equivalent of a threat that prosecutions are to be begun so immediately, in such numbers, and in such manner as to indicate the virtual certainty of that extraordinary injury which alone justifies equitable suspension of proceedings in criminal courts. The imminence and immediacy of proposed enforcement, the nature of the threats actually made and the exceptional and irreparable injury which complainants would sustain if those threats were carried out are among the vital allegations which must be shown to exist before restraint of criminal proceedings is justified."

2. The pleadings above set forth show further that the Attorney General has made good his threats of enforcement by the actual bringing of seven proceedings in *quo warranto* against seven employers (including four with whom various of appellant labor organizations have union-security agreements), seeking to withdraw the right of such employers to do business in the State if such employers continued to observe existing union-security agreements. Such action not only indicates conclusively that the threats of the Attorney General were not lightly made, but affords great and compelling stimulus to employers throughout the State

to abrogate their union-security agreements with appellant labor organizations forthwith. Indeed, the immediate effect of the bringing of such suits on at least one employer with whom several of appellant labor organizations have a union-security agreement was to bring about the very result which appellants seek to avoid through these proceedings. Defendant National Container Corporation, immediately after being served with notice of the bringing of the *quo warranto* action against it, served notice of the cancellation of its existing contract. Are appellants to be obliged to await further cancellations before asking the aid of a court of equity to protect their numerous agreements? In view of the repeated public threats of the Attorney General to bring criminal or civil prosecutions against each alleged violator, and in view of the fact that the Attorney General had actually brought a number of such proceedings, it can hardly be said that appellants are afforded an adequate remedy by intervening in each of these proceedings and all others that might, as threatened, be instituted in the immediate future, or by defending each of innumerable possible criminal prosecutions against themselves as such prosecutions arise. Even though adequate legal counsel were available in sufficient numbers, and even though appellants had sufficient funds to finance such interventions and such defenses, what is appellants' remedy against the imminent and wholesale repetition by other employers of the action taken by defendant National Container Corporation?

The pleadings disclose another situation which, with equal urgency, calls for equitable relief. The appellant, J. Gould Welding & Wrecking Co., and various appellant labor organizations are presently constrained from entering into a collective bargaining agreement providing for union security by reason of the threats of the Attorney General, although both such parties are desirous of entering into such an agreement (R. 25). Numerous similar situations exist

in the State at the present time, and have been in existence from the time of the Attorney General's threats to enforce the Amendment (R. 26). As set forth in the complaint, such situations continue to result in damage to both employer and labor organizations—the employer through an inability to secure sufficient skilled labor properly to conduct his business, the labor organization through the loss of the protection and benefits that would otherwise accrue to it. No injury could be more continuous, and no damage more immediate than exists in the situation where the employer is obliged to refuse to enter into or to renew union-security agreements solely because of the existence of the Amendment and the threats of the Attorney General to enforce it. In such cases, since no court can compel agreement to any term of a contract, the only possible remedy through court action is the obtaining of an injunction restraining enforcement of the Amendment in question. In the absence of any such restraint, appellants are losing and will continue to lose the protections and benefits of innumerable agreements that might otherwise be theirs.

There is a final ground for invocation of the powers of the District Court as a court of equity, and that is the prevention of a multiplicity of civil suits at law. The applicable principle is set forth in *Douglas* v. *Jeannette*, *supra:*

> "In general the jurisdiction of equity to avoid multiplicity of civil suits at law is restricted to those cases where there would otherwise be some necessity for the maintenance of numerous suits between the same parties involving the same issues of law or fact. It does not ordinarily extend to cases where there are numerous parties and the issues between them and the adverse party—here the state—are not necessarily identical."

Examination of the seven *quo warranto* proceedings made a part of the pleadings before the District Court (R. 61, 97, 102, 107, 114, 120 and 173) indicates that the issues in

those proceedings as between the labor organizations (who, as the pleadings show, would be obliged to intervene to protect their rights) and the State would be identical, as they would be in the remaining approximately five hundred cases, involving the appellant labor organizations herein and the State, that would have to brought in order to reach all of the appellants' agreements presently in existence (R. 13).

It is respectfully submitted that appellant labor organizations, as well as appellant employers, threatened as they are with numerous criminal prosecutions and numerous civil suits for damages, faced, in so far as appellant labor organizations are concerned, with the immediate possibility of wholesale cancellations of existing union-security agreements, and presently prevented both from renewing expired agreements and from entering into new agreements, all with immediately disastrous consequences, have no alternative but to appeal to a court of equity for relief. Since the law in question is alleged to deprive of rights guaranteed under the United States Constitution, and since it is the action of the state law enforcement officials which appellants seek to enjoin, appellants have turned to the Federal Courts under Section 380 of Title 28 of the United States Code.

Before concluding this brief, an additional point may require brief discussion. A query was raised by the Court below (but not by the Attorney General or other defendants) as to whether the Amendment in question was operative in the absence of enforcement or enabling legislation (R. 218). This raises the question of whether appellants are in any way damaged.

The general rule is that a constitutional provision is self-executing if it supplies a sufficient rule by means of which the right which it grants may be enjoyed and pro-

tected, or the duty which it imposes may be enforced, without the aid of legislative enactment. *Davis* v. *Burke*, 179 U. S. 399; *Whitman* v. *National Bank*, 176 U. S. 559. See also *City of Tampa* v. *Tampa Water Works Co.* (Fla.), 34 Sou. 631; *Lummus* v. *Miami Beach Congregational Church* (Fla.), 195 Sou. 607. The omission of any express provision for enforcing a right or liability is not necessarily an indication that it was not intended to be self-executing. Under the maxim "ubi jus ibi remedium", the common law will furnish an appropriate remedy. *Whitman* v. *National Bank, supra; Gaiser* v. *Buck*, 203 Ind. 9, 179 N. E. 1, 82 A. L. R. 1348; *State* v. *Warner*, 165 Mo. 399, 65 S. W. 584. The presumption is that all provisions of a State constitution are self-executing. *Winchester* v. *Howard*, 136 Cal. 432, 64 Pac. 692, 69 Pac. 77, 11 Amer. Juris. 689. In particular, prohibitory provisions in a constitution are self-executing to the extent that anything done in violation of them is void. *Norton* v. *Taxing District*, 129 U. S. 479; *Beard* v. *Hopkinsville*, 95 Ky. 239, 24 S. W. 872, 23 L. R. A. 402.

The constitutional Amendment involved in this case very specifically provides that "the right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union." The Amendment is clearly prohibitive. If valid, surely no enabling legislation is necessary to prevent private individuals from agreeing among themselves that membership in the union shall be a condition of employment any more than enabling legislation would be necessary to prevent the State from taking private property without just compensation, prohibited in another portion of this same Amendment. Whether any particular sections of existing state criminal statutes are available to the Attorney General for enforc-

ing the Amendment criminally is immaterial if in fact the Amendment is self-executing as contended by both appellants and respondents herein.

Conclusion

It is respectfully submitted that the Court below has jurisdiction under Section 380 of Title 28 of the Judicial Code, as amended, and has jurisdiction as a court of equity, and it is respectfully requested that this Court proceed to a determination of the validity under the United States Constitution of the Florida Amendment abrogating union-security agreements.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 448

AMERICAN FEDERATION OF LABOR; METAL TRADES DEPARTMENT, A. F. OF L.; FLORIDA STATE FEDERATION OF LABOR, ET AL.,

Appellants,

vs.

J. TOM WATSON, AS ATTORNEY GENERAL OF THE STATE OF FLORIDA, ET AL.

STATEMENT OF CIGAR MANUFACTURERS ASSOCIATION OF TAMPA, APPELLEE, DISCLOSING MATTER AND GROUNDS MAKING AGAINST THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES AND MOTION TO DISMISS APPEAL.

The Cigar Manufacturers Association of Tampa, appellee, respectfully shows the Court that it filed a motion in said action to dismiss the complaint, presenting among other grounds that no relief was asked or prayed for against said appellee, nor was any right to relief asserted against said appellee. That said motion came on for hearing on May 24, 1945 at which time the attorneys for

the appellants stated they had no objection to the Court sustaining said motion. That thereupon said motion was sustained by the Court. That the order sustaining said motion recites the statement made by said attorneys. That said action by the appellants constituted and was a consent to the Court sustaining said motion and that therefore said appellants have no grounds on which to base an appeal herein as against said appellee.

WHEREFORE, the appellee moves that said appeal be dismissed as against the Cigar Manufacturers Association of Tampa.

RAY C. BROWN,
Attorney for Appellee,
1203 Citizens Building,
Tampa 2, Florida.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 448

AMERICAN FEDERATION OF LABOR; METAL TRADES DEPARTMENT, A. F. OF L.; FLORIDA STATE FEDERATION OF LABOR, ET AL.,

Appellants,

vs.

J. TOM WATSON, AS ATTORNEY GENERAL OF THE STATE OF FLORIDA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

J. TOM WATSON,
Attorney General of Florida;
SUMTER LEITNER,
HOWARD S. BAILEY,
GEORGE M. POWELL,
Assistant Attorneys General of Florida,
Counsel for Appellee, J. Tom Watson,
as Attorney General of the State of Florida.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 448

AMERICAN FEDERATION OF LABOR; METAL TRADES DEPARTMENT, A. F. OF L.; FLORIDA STATE FEDERATION OF LABOR, ET AL.,

Appellants,

vs.

J. TOM WATSON, AS ATTORNEY GENERAL OF THE STATE OF FLORIDA, ET AL.

APPELLEE'S STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

The Appellee, J. Tom Watson, as Attorney General of the State of Florida, believing that the matters set forth below will demonstrate the lack of substance in the questions raised by this appeal, files this his statement in opposition to appellants' statement as to jurisdiction.

Appellee includes herein his motion to dismiss the appeal, or, in the alternative, to affirm the judgment of the District Court of the United States in and for the Southern District of Florida, on the ground that questions raised on behalf of appellants are so unsubstantial as not to need further argument.

Appellee also shows that the judgment of the District Court must in any event be affirmed for the fact that the bill of complaint in this cause shows upon its face an absolute want of irreparable injury; this fact remains unchallenged and is amply supported by the quality of the allegations of the bill of complaint. *Watson* v. *Buck*, 313 U. S. 387.

Appellee also shows to the Court that it is obvious from the reading of the bill of complaint in this cause that the allegations contained therein are without factual basis, that the complainants, most of whom never heard of this suit, and have no actual interest herein, have been used in an unwarranted expansion of its importance, to put forward a mass of conclusions designed to convince a three-judge court and this court that an actual justificable controversy is present when in fact no injury or damage, irreparable or otherwise, has occurred and the suit is palpably without casual basis.

The matters here relied upon by appellee are more particularly stated below.

The appellants, in their statement in support of jurisdiction and particularly subsection D thereof, being "Substantiality of Questions Involved," base their argument on the fact that the substantial nature of the question involved in this case is an economic one; that is: that because of the fact that the so-called "closed shop" has been in existence for many years; that becaues a substantial part of the workers of American have been compelled to work under the closed shop agreement; that because the results of a closed shop have been good; and that because the unions can thus more effectively bargain with employers, jurisdiction of the Supreme Court of the United States should lie to review the said appeal.

Courts are not concerned with the wisdom or lack of wisdom of a state statute or of a provision in a state constitution, but what this Court is concerned with here is whether or not a section of the Florida Constitution, reading as follows:

> "Section 12. No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any criminal case to be a witness against himself, nor be depsived of life, liberty, or property without due process of law; nor shall private property be taken without just compensation. *The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer.*" (Emphasis supplied.)

violates the Federal Constitution or any Federal law.

Nowhere do the appellants show that it violates the Federal Constitution in any manner, shape or form, and neither can they show that it violates any Federal law. Instead of violating any Federal law or the Constitution, it guarantees to the workers the rights of collective bargaining—all that the Federal Law guarantees. It is true that it does prohibit the making and enforcing of the "closed shop" or as appellants call them "union security agreements." The people of Florida have decided that they do not want the "closed shop" This is a matter for them to decide and not the Court.

It is a familiar and well-established principle of law that only those adversely affected by a claimed unconstitutionality may sue. In this case, when one searches the record for some allegations of fact showing injury to any party

plaintiff, he searches in vain; for only conclusions based upon economic theories will be his reward.

WHEREFORE, appellee respectfully moves the Court to dismiss this appeal, or, in the alternative, to affirm the decree of the District Court heretofore entered herein.

Respectfully submitted,

J. TOM WATSON,
as Attorney General of Florida;
SUMTER LEITNER,
as Assistant Attorney General;
HOWARD S. BAILEY,
as Assistant Attorney General.
GEORGE M. POWELL,
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Solicitors and of Counsel for J. Tom Watson,
as Attorney General of the State of Florida.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 448

AMERICAN FEDERATION OF LABOR; METAL TRADES DEPARTMENT, A. F. OF L.; FLORIDA STATE FEDERATION OF LABOR, ET AL.,

APPELLANTS,

vs.

J. TOM WATSON, AS ATTORNEY GENERAL OF THE STATE OF FLORIDA, ET AL.,

APPELLEES.

Appeal From The District Court of The United States For The Southern District of Florida

BRIEF FOR APPELLEE, J. TOM WATSON, As Attorney General of Florida

J. TOM WATSON
Attorney General of Florida
SUMTER LEITNER, *Assistant Attorney General of Florida*
HOWARD S. BAILEY, *Assistant Attorney General of Florida*
COUNSEL FOR APPELLEE, J. TOM WATSON, as Attorney General of Florida.

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SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1945

No. 448

AMERICAN FEDERATION OF LABOR; METAL TRADES DEPARTMENT, A. F. OF L.; FLORIDA STATE FEDERATION OF LABOR, ET AL.,

APPELLANTS,

vs.

J. TOM WATSON, AS ATTORNEY GENERAL OF THE STATE OF FLORIDA, ET AL.,

APPELLEES.

BRIEF FOR APPELLEE, J. TOM WATSON, As Attorney General of the State of Florida

OPINION OF THE COURT BELOW

This case is on appeal to this Court from the order and opinion of the special three-judge District Court for the Southern District of Florida, in the cause of American Federation of Labor, et al. vs. J. Tom Watson, as Attorney General of the State of Florida, et al. (R. 206-218), reported in 60 F. Supp. 1010.

JURISDICTION

Under the order of this Court of November 13, 1945 (R. 228), it would seem that this brief is limited to those jurisdictional questions specified in such order with respect to the lower court.

STATE CONSTITUTIONAL PROVISION INVOLVED

The provision of the Constitution of Florida involved in these proceedings is an amendment thereto, popularly known as the "Right-to-Work" Amendment, submitted to the people of Florida for ratification by House Joint Resolution No. 13, of the regular 1943 session of the Florida Legislature, and ratified by the people of Florida at the general election held on November 7, 1944. The amendment consists of an addition to Section 12 of the Declaration of Rights of the Florida Constitution. Said Section 12, as amended, reads as follows (the italicized portion thereof being that part involved in these proceedings and comprising such recent amendment thereto):

> "Section 12. No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken without just compensation. *The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer.*" (Italics supplied.)

STATEMENT OF THE CASE

Appellants (plaintiffs below), American Federation of Labor; Florida State Federation of Labor; twenty-two named national or international labor unions, all affiliated with American Federation of Labor; thirty-two named local unions in Florida of one or the other na-

tional or international unions; three natural persons, idividually and as officials of one or the other of the named Florida labor unions; one individual employer and two corporate employers, as plaintiffs and representatives of a class, filed their complaint in the United States District Court for the Southern District of Florida, at Tampa, Florida, against J. Tom Watson, as Attorney General of Florida, Millard Caldwell, as Governor of Florida, J. Rex Farrior, as State Attorney in and for Hillsborough County, Florida, Hugh Culbreath, as Sheriff of Hillsborough County, Florida, as defendants and representatives of a class, and against four corporations and one manufacturers' association, as nominal defendants (R. 1-41).

The appellants' stated purpose in said suit was to obtain temporary and permanent injunctions against enforcement of such amendment to said Section 12 of the Declaration of Rights. Briefly, and without considering the sufficiency of appellants' allegations in their complaint, the appellants alleged, in effect, that with respect to agreements which require membership in a labor organization as a condition of employment, the said constitutional provision threatened the invasion and impairment of certain enumerated rights under the Constitution and laws of the United States; that the threatened action of the defendants in the court below, as enforcement officers, under color of said amendment, to enforce the provisions of the same, would invade and destroy certain personal and property rights of appellants and, among other things, would result in irreparable damage to the appellants and all their class; all as set forth, related and detailed in said complaint. The complaint further prayed that the cause be heard by a three-judge

court under Section 266 of the Judicial Code (U. S. C. A., Title 28, Section 380).

All defendants in the Court below (disregarding "nominal defendants") other than this appellee, filed answers to said complaint (R. 47, 49, 50, 53). The appellee filed motion to dismiss appellants' action (R. 41-44). Such motion to dismiss consisted of twenty-three grounds, but for the purposes of the limited jurisdictional features of the case fixed by the Court, it seems only necessary to summarize the following questions presented by such motion.

(1) The allegations of the complaint were not sufficient to vest jurisdiction in the United States District Court (a) as a controversy arising under the Constitution and laws of the United States involving an amount in excess of $3000 under Section 41 (1), Title 28, U. S. C. A., or (b) as a suit for redress of the deprivation of civil rights under Section 41 (14), Title 28, U. S. C. A.

(2) Even if the United States District Court had jurisdiction under either of the above mentioned sections, since the Florida enactment inveighed against was a state *constitutional* provision, as distinguished from a *statute*, no authority existed for convoking a three-judge court under Section 380, Title 28, U. S. C. A.

(3) The allegations of fact in the complaint, as distinguished from conclusions of law, fail to show such "irreparable injury" on the part of plaintiffs, or either of them, to authorize the relief prayed.

(4) The said constitutional amendment was a valid exercise of the police power reserved to Flor-

ida under the United States Constitution, and that such amendment was invulnerable to attacks leveled at it on United States constitutional and statutory grounds.

The three-judge court convoked to hear and determine the application of the appellants for interlocutory injunction (R. 54-55), at a hearing on appellee's said motion to dismiss and said appellants' application, dissolved a temporary injunction theretofore issued by the judge of said Court (R. 76-77), and, for the reasons hereinafter set forth, sustained appellee's motion to dismiss (R. 206-219).

In arriving at its decision in the cause, the Court below made the following findings of fact and conclusions of law (R. 205-206):

"FINDINGS OF FACT

1. No facts are put in issue by any answer filed in this cause.

2. All allegations of fact, as distinguished from conclusions of law, contained in the complaint are admitted by the motion of the Attorney General to dismiss, and no factual issues necessary to a decision in this cause are involved.

CONCLUSIONS OF LAW

1. The District Court of the United States has jurisdiction of the controversy under Section 41 (1) of Title 28, U. S. C. A.

2. The District Court of the United States has jurisdiction of the controversy under Sections 41(14) of Title 28 and 43 of Title 8, U. S. C. A.

3. A three-judge Court has jurisdiction under Section 380 of Title 28, U. S. C. A.

4. The amendment to Article 12 of the Declaration of Rights of the State of Florida is not in violation of any provision of the Federal Constitution.

5. Said amendment to said constitution is an appropriate exercise of the police power of the State of Florida.

6. It does not appear on the face of the amendment or on the face of the complaint that said amendment collides with any statute of the United States regulating labor in interstate commerce, but without deciding that no situations could arise which would result in conflict between Federal statutes and the said constitutional amendment, we find that such situations are not exhibited herein and that no case is made out for the granting of an injunction against the defendants, or either of them, even if it be conceded that a three-judge Court has the authority to enjoin corporate or individual defendants who are not officers of the State nor charged with the enforcement or execution of the constitutional amendment in question.

7. Whether or not the allegations of the complaint appropriately allege irreparable injury is not necessary to a decision.

The conclusions of the Court are more fully set forth in the opinion attached hereto."

SPECIFICATION OF ERROR

The aspects of this case discussed in this brief are specified in the order of this Court of November 13, 1945 (R. 228), which order is quoted as follows:

"The statement of jurisdiction in this case having been submitted and considered by the Court, prob-

able jurisdiction is noted and the arguments will be limited to the questions of the jurisdiction of the District Court under Section 266 of the Judicial Code, as amended (28 U. S. C. 380), and its jurisdiction as a court of equity."

Since such order specifically limits the argument of the parties to the jurisdictional phases mentioned, precluding any argument upon the merits of the cause under questions presented by appellants' assignments of error (R. 221-223), this brief is limited to those matters presented in the above order of the Court, which this Appellee construes as specifying the following questions for discussion:

1. Did the three-judge court, convoked under Section 266 of the Judicial Code, as amended, have jurisdiction to hear this cause?

2. Granted that the three-judge court properly was convoked, was the action of such court in dismissing the complaint for the reasons that it did, within its jurisdiction as a court of equity?

ARGUMENT

For the purpose of this argument we are accepting the lower court's adjudication of jurisdiction as being vested to consider the case, which the allegations of fact in the bill as distinguished from conclusions of law present, founded upon the four federal statutes and whatever pertinent parts these statutes contain that are cited in their conclusions of law, to-wit: Section 41, sub-paragraph 1 of Title 28, Section 41, sub-paragraph 14 of Title 28, Section 43 of Title 8 and Section 380 of Title 28, U. S. C. A., although in the lower court several questions were argued by the appellee and insisted upon

contrariwise. In our opinion, the lower court of its own volition, so to speak, took jurisdiction of the subject matter in this case and our argument hereinafter made undertakes to support it in this action, but this jurisdiction was taken by the three judges after one of them had issued a temporary restraining order over objections by the State of Florida.

I.

JURISDICTION OF THE THREE-JUDGE COURT

In view of the second question above, it seems apparent that the Court in the first question had reference to "power" of the Court as distinguished from its "equity jurisdiction."

The objections to jurisdiction of the lower court presented by Appellee's motion to dismiss have been heretofore noted. The Appellee's position with respect to such motion and the questions presented by it in the lower court was not lightly assumed, but, as we desire to contend now, we argue that the court had the right to pass upon the Constitution presented in determining whether it deprived the plaintiffs of any civil rights, predicated upon the contention that the three judge court having been convoked at the request of the plaintiff, by one of these judges, after that judge had granted a temporary restraining order, did have jurisdiction under the allegations of the bill to pass upon the civil rights question involved. The granting of the injunction is what the three-judge court was being urged to do in the face of a temporary restraining order that had already been issued by one federal judge of the three-judge court, granted to hold until the three-judge court hearing could be had. When the three-judge hearing was had the action of the

one judge was rescinded and the permanent injunction denied, and in so doing the three judges passed upon the validity of the Constitutional amendment involved.

The reason we took the position in the lower court that the suit ought to be dismissed without passing upon the merits was because we were not distinguishing the difference between equity jurisdiction under Title 8, Section 43 to pass upon the Florida Constitution in determining whether or not plaintiffs were being deprived of any civil rights by virtue of the Florida Constitution, from the urge that was being made by plaintiffs that jurisdiction existed to grant the injunction, because they insisted that even though a Constitutional provision of Florida was involved, still the provisions of Title 28, Section 41, sub-paragraph 14 controlled and redress could be had under this last referred to section, even though the color of the law doing so was a Constitutional provision instead of a statute, ordinance, etc. Against this contention we urged the grounds of this motion without giving any particular consideration to the power of the court under Title 8, Section 43. This latter statute is the one that we rely upon now in insisting upon the right of the Supreme Court to affirm the entire holding of the lower court including the power exercised by it to pass upon the merits. In denying the injunction the lower court, as heretofore stated, passed upon the validity of the Constitutional amendment involved and in doing so as conclusions of law has said that it had jurisdiction of the case under Section 41, sub-paragraph 1 of Title 28, Section 41, sub-paragraph 14 of Title 28 and Section 380 of Title 28, U. S. C. A. We are not now contending that it did not have this jurisdiction because we are distinguishing power from jurisdiction by urging that it has power to determine merits, still insisting that it did

not have jurisdiction to grant the injunction. Section 41, Title 28 uses the same restrictive language in referring to the type of State regulation being attacked as Title 8, Section 43, but the first statute contains a limitation which confers jurisdiction to redress deprivation of civil rights upon the federal courts of equity "of all suits * * * in equity *authorized by law.*" This language "authorized by law" is not incorporated in Title 8, Section 43, but Title 8, Section 43 confers jurisdiction for every person claimed to be deprived of rights secured by the Constitution of the United States under color of any regulation of any state to bring his claim of deprivation into a court of equity for adjudication. There is no limitation of only such cases as are "authorized by law" placed upon the jurisdiction conferred upon the federal courts of equity by the provisions of this Title 8, Section 43.

In connection with the preceding argument the question presents itself, of course, of whether three judges could sit under Title 8, Section 43 and pass upon the deprivation of civil rights by determining the merits of any contention regarding Florida's Constitution. Our position on that is the three judges having been invoked by the plaintiffs upon the contention set up in their bill that they presented a proper case for injunction after denying this injunction, there remained in the three judges the power to pass upon the civil rights question which Title 8, Section 43 undertakes to protect.

Upon consideration of the issues raised by this motion, the lower court adjudged that it had power to pass upon the merits of the amendment, and did so, holding at the same time that no jurisdiction was made to appear under the averments of the bill under which it had the right to grant an injunction. Such adjudication was founded

by that Court upon Section 41, sub-paragraph 14, Title 28, Section 380, Title 28 and Section 43, Title 8, U. S. C. A.

Section 41, sub-paragraph 14, Title 28, supra, confers jurisdiction on the district courts of suits in equity *as authorized by law* to redress the deprivation made under color of any law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States. Section 380, Title 28, supra, imposes a three-judge tribunal for granting injunctions and provides the direct appeal to the Supreme Court of the United States. Section 43, Title 8, supra, gives to every person alleged to be deprived of civil rights *the right* to oppose such deprivation in an action at law or *suit in equity*. In Douglas vs. Jeannette, 319 U. S. 157, 87 L. Ed. 1325, this court recognized the difference between the power to hear a case, and the jurisdiction to grant relief and remedy prayed for, and cited this Title 8, Section 43, U. S. C. A. in support thereof.

At the time of the hearing of the instant case by the three-judge court there were pending in the State courts of Florida several quo warranto proceedings brought by the Attorney General of Florida against Florida corporations, challenging the right of these Florida corporations to continue certain closed shop and other union security contracts that were believed to be in violation of the Florida Constitutional amendment involved here. These quo warranto suits were not brought against unions, but against the corporation party to the union contract, and our greatest concern in connection with our motion to dismiss that was filed in the instant case in the lower court was to prevent a federal injunction against the prosecution of these quo warranto suits. The existence

of these quo warranto suits could in nowise be claimed by the union to constitute irreparable injury to them because they were predicated upon a validly adopted amendment to the Constitution of Florida, and directed against an alleged offender of this amendment, the corporation defendant in each one. The power and authority of the Attorney General to bring such quo warranto suit only extended over such corporations. He could not have brought the same against a partnership, a common law trust or an individually owned business. His jurisdiction in quo warranto matters only extended to alleged ultra vires action of a Florida State permit holding corporation.

We respectfully urge to your Court that the lower court had the authority to assume jurisdiction or to deny it in the matter of passing upon the validity of the provision of the Florida Constitution involved under federal law; its powers extended in both directions and to both ends, but it did not have the authority to grant the injunction being sought because no irreparable injury was shown by the bill, and no direct action or conduct against the unions is charged in the bill to have been engaged in, or launched upon, that made an injunction the right and proper remedy for the plaintiffs' or appellants' relief.

We believe the lower court should have dismissed the bill and the application for injunction which it contained. We also believe that under Section 43, Title 8, supra, the lower court through either a one judge action, or having been convoked for the purpose of granting an injunction, after denying the latter, the three judge action had the right, authority and power to pass upon the validity of the State Constitutional provision involved in exactly the manner in which it did.

II.

EQUITY JURISDICTION OF LOWER COURT

It would seem to be the general rule that the "equity jurisdiction" of a court is not dependent upon whether the relief prayed for in a proceedings may, under equity jurisprudence, be granted in whole or part, but depends upon the nature of the subject matter involved in the proceedings. Under such rule, "equity jurisdiction" may exist in a cause, although it is one which the doctrine of "equity jurisprudence" forbids any relief to be given or any right to be maintained. Sections 130, 131, pages 176-180, Volume 1, Pomeroy's Equity Jurisprudence, Fifth Addition.

Your Court clearly distinguishes the power and jurisdiction of equity courts in the previously referred to late case of Douglas vs. Jeannette, supra. In that case the petitioners maintained they were threatened with criminal prosecution under an ordinance of Jeannette, Pennsylvania, alleged by them to deprive them of certain of their rights under the United States Constitution, and they sought and obtained in a United States District Court an injunction against enforcement of such ordinance. The Court of Appeals for the Third Circuit sustained the jurisdiction of the district court, but reversed the case on the merits. Certiorari was granted by your Court. In discussing the "jurisdiction" of the district court, your Court stated, in part:

> "Notwithstanding the authority of the district court, as a federal court, to hear and dispose of the case, petitioners are entitled to the relief prayed only if they establish a cause of action in equity. Want of equity jurisdiction, while not going to the power of the court to decide the cause, Di Giovanni

v. Camden F. Ins. Asso. 296, U. S. 64, 80 L. Ed. 47, 51, 56 S. Ct. 1; Pennsylvania v. Williams, 294 U. S. 176, 181, 182, 79 L. Ed. 841, 846, 55 S. Ct. 380, 96 ALR 1166, may nevertheless, in the discretion of the court, be objected to on its own motion. Twist v. Prairie Oil & Gas Co., 274 U. S. 684, 690, 71 L. Ed. 1297, 1301, 47 S. Ct. 755; Pennsylvania v. Williams, supra (294 U. S. 185, 79 L. Ed. 847, 55 S. Ct. 380, 96 ALR 1166). Especially should it do so where its powers are invoked to interfere by injunction with threatened crimial prosecution in a State court."

This court refused to accept the "multiplicity of suits theory" to invoke "equity jurisdiction," and held in effect, that since there was a failure of petitioners to show danger of irreparable injury, "both great and immediate," the district court should not have exercised "equity jurisdiction" by granting an injunction, but should have dismissed the bill.

In Douglas vs. Jeannette, supra, the lower court granted the injunction applied for, but the Circuit Court of Appeals reversed this grant by reversing the case on its merits, which Circuit Court of Appeals order in the certiorari from the Supreme Court of the United States, was affirmed, holding in effect that the justification therefor was the failure of the bill to show that character of irreparable injury which constituted a cause of action in equity, but at the same time holding that the lower court possessed the jurisdiction and power to pass upon the merits presented.

If it had power to pass upon the merits presented for the purpose of determining whether or not the relief sought could be given, it also had the power to determine whether or not any contention regarding the crux or gravamen of the suit was right or wrong.

We are concerned here with the question of whether the lower court had the "power" or "jurisdiction," as such terms are commonly associated with courts of equity, to enter the order dismissing the complaint, and determining the validity of the Constitutional provision involved; or, to express it in another way, whether the Court in entering such order exercised "equity jurisdiction" in derogation of the ruling of this Court set forth in Douglas vs. Jeannette, supra.

At this point it seems appropriate to observe that while this Court in Douglas vs. Jeannette, supra, held that the district court had no "equity jurisdiction" to issue the injunction that it did, obviously this Court recognized that such court had the "power" or "jurisdiction," as a court of equity, to dismiss the proceedings because of the insufficiencies noted by this Court in such case.

The lower court in the instant case in its disposition of the cause considered, at least categorically, the contentions of the Appellee (1) that no irreparable injury on the part of plaintiffs, or either of them, was sufficiently shown and (2) that the challenged constitutional amendment was a valid exercise of the police power of Florida.

Thus, it would seem, it is only where the law challenged is unconstitutional or otherwise invalid and where in the attempt to enforce it there is a direct invasion of property rights resulting in "irreparable injury," that an injunction will issue to restrain the enforcement thereof. The two elements of (1) invalidity of the law challenged, and (2) "irreparable damages" resulting from its enforcement, must coincide to afford injunctive relief; and, obviously, where there is a failure to show such invalidity the relief will not be granted. Amalga-

mated Oil & Gas Corp. vs. San Francisco, 263 Fed. 617. It is apparent that on this question of "irreparable injury" the first question a court, in harmony with elementary logic, properly may determine is whether or not the law assailed is invalid, for there can be no "injury" in law occasioned by valid legislation.

The lower court in its opinion (R. 218) made the following direct remark on the subject of "irreparable injury":

> "A three-judge Court cannot be convened merely to prevent a multiplicity of suits in the state courts by the Attorney General against employers of labor. But it does not seem necessary for us to determine whether or not irreparable injury to plaintiffs can result, nor do we here undertake to decide what complications might arise out of the operations of the National Labor Relations Act and the Florida constitutional amendment, but deem it necessary only to say that the Federal Act and the amendment on their face do not appear to be in conflict, and it will be time enough to judge of such conflicts if and when they actually arise. This is not an action for a declaratory judgment but an injunction suit in anticipation of irreparable injury."

There is no confusion in this wording of the Court. The Court did not undertake to decide that no conflict would ever arise in the operations of the National Labor Relations Act and the Florida Constitutional Amendment, but that on their face and the showing made to the Court they did not appear to be in conflict.

Thus, the lower court disposed of the case in a logical manner. The court adjudged the constitutional amendment inveighed against valid; a further discussion of the question of "irreparable injury" would have been irrelevant and futile.

The position of the Appellee with respect to this second question is summarized as follows:

The three-judge court had the "power," that is to say "jurisdiction," as such latter term is usually employed in equity jurisprudence, to consider and dismiss the complaint as it did; and did not exercise "equity jurisdiction" in derogation of the rule with respect thereto set forth in Douglas vs. Jeannette, supra.

CONCLUSION

The questions and controversy involved in this case are too important to be lightly or exclusively technically dealt with. Fundamental Constitutional rights and powers that go to the very organic law of both the States and Federal government are involved. Because of these verities the Attorney General of Florida feels certain that this Court, having confined argument on this first hearing before it in this case to particular jurisdictional questions, will not undertake to decide the merits involved herein contrary to the lower court's opinion without first making a ruling on the jurisdictional question definite and final, and giving further privileges in the matter of briefing and orally arguing the merits before you adjudicate same so contrarily. Likewise we might say that the appellants are entitled to the same consideration on merits before you affirm the lower court's opinion rendered on merits. We respectfully call your attention again to the finding of facts and conclusions of law heretofore recited in this brief, and to the further fact that along with these findings and conclusions, the opinion of the lower court concerning the merits, also heretofore cited, was rendered, and we respectfully submit that these are in their entirety sound, and were within the power and jurisdiction of the lower court to make, and it is our urge now that the Supreme Court affirm this lower court's order in its jurisdictional aspects. We are anxious to get this case before your Honorable Court on its merits dealing squarely with the question of whether or not the involved Florida Con-

stitutional amendment violates any Federal law, and obtaining your decision thereupon.

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Attorney General of Florida

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SUMTER LEITNER
Assistant Attorney General

.....

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STATE CAPITOL,
TALLAHASSEE, FLORIDA

COUNSEL FOR APPELLEE, J. TOM WATSON, AS ATTORNEY GENERAL OF THE STATE OF FLORIDA

SUPREME COURT OF THE UNITED STATES.

No. 448.—October Term, 1945.

American Federation of Labor; Metal Trades Department, A. F. of L.; Florida State Federation of Labor, et al., Appellants,
vs.
J. Tom Watson, as Attorney General of the State of Florida, et al.

Appeal from the District Court of the United States for the Southern District of Florida.

[March 25, 1946.]

Mr. Justice Douglas delivered the opinion of the Court.

In 1944 Florida adopted an amendment to her Constitution[1] which reads as follows:

> "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union, or labor organization; provided that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer."

Shortly thereafter this suit was instituted to enjoin the enforcement of that provision on the ground that it violated the First Amendment, Fourteenth Amendment, and the Contract Clause of Article I, Section 10 of the federal constitution and was in conflict with the National Labor Relations Act (49 Stat. 449, 29 U. S. C. § 151) and the Norris-La Guardia Act. 47 Stat. 70, 29 U. S. C. § 101.

The appellants (plaintiffs below) are various national and local labor organizations operating in Florida, individual employee members of those organizations who are citizens of the United States, and three employers doing business in Florida.[2] Appel-

[1] The amendment, designated as House Joint Resolution No. 13, was passed by the regular session of the legislature in 1943 (L. 1943, p. 1134) and was ratified by the people at the general election held on November 7, 1944.

[2] McCloskey & Co., a Delaware corporation in the business of building ships at Tampa, Florida; R. J. Gould, engaged in general welding and structural steel building work in Tampa, Florida, and doing business under the name of Gould Welding & Erecting Co.; Tampa Florida Brewery, Inc., a Florida corporation, engaged in the brewery business at Tampa, Florida.

lees are the Attorney General and other officials of Florida charged with duties of law enforcement and various employers. The theory of the bill is that the law in question outlaws any agreement which requires membership in a labor organization as a condition of employment, all of which we refer to herein as the closed shop. It is alleged that the appellant labor organizations or their affiliates have been designated as the collective bargaining representatives of employees of numerous employers in Florida and that a large number of those local and national unions have, or desire or are about to become parties to, closed-shop agreements with Florida employers. It is alleged that the closed-shop agreement constitutes the most effective means possessed by organized labor to attain economic security, to deter practices destructive of public policy and the interests of wage earners and effectively to bargain collectively. It is alleged that many of the defendant employers and two of the three plaintiff employers are parties to closed-shop agreements with some of the appellant unions which expire at various dates in the year 1945 and thereafter continue in effect on a year-to-year basis. Those contracts are alleged to be valuable property rights of the appellant unions and their members. It is alleged that one appellant employer (R. J. Gould) and some of the appellant unions are desirous of entering into a closed-shop agreement but are prevented from so doing so by the Florida law. It is alleged that the same condition obtains with respect to other employers in Florida.

The bill alleges that appellee law enforcement officials have taken the position that closed-shop agreements violate the Florida

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[3] Tampa Shipbuilding Co. and St. Johns River Shipbuilding Co., Florida corporations, engaged in the building and construction of ships at Florida ports; Weir's Dry Cleaners & Laundry, Inc., a Florida corporation, engaged in the dry cleaning and laundry business in Tampa, Florida; National Container Corp., a Florida corporation, manufacturing paper containers in Jacksonville, Florida; Cigar Manufacturers Assoc. of Tampa, a voluntary association of Tampa cigar manufacturers.

These parties were joined as defendants because they had collective bargaining agreements with various of appellant labor organizations. They are called nominal defendants since no relief was sought against them.

[4] It is alleged that some of these agreements are for periods of one year with automatic renewal clauses for additional one year periods, others for a period of years up to five, some for the duration of the war, and others for periods about to expire.

The constitutions of some of the appellant unions require that all persons who desire to obtain or retain memberships in the unions shall work only with union members.

It is alleged that membership in appellant unions is open to all who meet the requirements of skill prescribed for the work, who will support the discipline and by-laws of the unions, and who are of good character

law and that they intend to enforce compliance with it by civil and criminal proceedings. The bill alleges that appellee Watson threatens to institute *quo warranto* proceedings against various companies with whom appellant unions have collective bargaining agreements containing closed-shop agreements, whereby it will be sought to cancel their corporate franchises unless the closed-shop provisions of the agreement are not observed. And appellants' motion for a restraining order alleges that *quo warranto* proceedings have been instituted for that purpose against a number of such companies, including three of the corporate appellees. The bill further alleges that appellee Watson has threatened appellant unions and their officers and agents and the individual appellants with criminal prosecutions unless they give up the closed-shop agreements and refrain from renewing or entering into any such agreements. It alleges that he has ordered law enforcement agencies to institute such prosecutions immediately and that they are in process of being prepared.

Irreparable injury is alleged as follows: the threatened proceedings (a) will result in interminable litigation and multiplicity of prosecutions and legal proceedings; (b) will cause widespread disruption of employment relations and production; (c) will deprive appellants of the benefits of existing contracts; (d) will cause appellant unions to lose present and prospective members and imperil the security of the unions and their members; (e) will make it impossible for one of the appellant employers, J. R. Gould, to obtain sufficient skilled labor to conduct his business; and (f) will cause a cessation of collective bargaining relations between the appellant unions and employers and will result in the disorganization and disintegration of the unions.

The prayer was for a temporary and permanent injunction. A motion to dismiss was made which, though denying a showing of irreparable damage, raised no issue of fact other than the question whether the amount involved in the controversy exceeds $3000.

The district judge granted a temporary restraining order and pursuant to a prayer of the bill caused a three-judge court to be convened. § 266 Judicial Code, 28 U. S. C. § 380. The District Court concluded that it had jurisdiction of the controversy. But without determining whether there was equity in the bill, *Douglas v. Jeannette*, 319 U. S. 157, 162-163, or whether, pursuant to the rule of *Railroad Commission v. Pullman Co.*, 312 U. S. 496, *Chi-*

cago v. *Fieldcrest Dairies*, 316 U. S. 168; *Spector Motor Co.* v. *McLaughlin*, 323 U. S. 101, the case should be held until an authoritative interpretation of the Florida law by the Florida courts could first be obtained, it proceeded at once to a consideration of the constitutional questions. It held that this Florida law did not violate the First or Fourteenth Amendment nor the Contract Clause of Article I, Section 10 of the federal constitution. It held that it would be time to consider any conflict with the National Labor Relations Act if and when it arose, since that Act and the Florida law did not on their face appear to be in conflict. It accordingly vacated the temporary restraining order and dismissed the complaint. 60 F. Supp. 1010. The case is here on appeal.

The initial question is whether the District Court had jurisdiction as a federal court to hear and decide merits.[5] The federal district courts have jurisdiction of all suits of a civil nature, at common law or in equity where the matter in controversy exceeds, exclusive of interest and costs, $3000 and "arises under the Constitution or laws of the United States." Judicial Code § 24(1), 28 U. S. C. § 41(1). The allegations are that if the Florida law becomes effective there will be an immediate decrease in the membership of appellant unions and the dues collected by them will decrease far in excess of $3000. Similar allegations are made to the effect that enforcement of the Florida law will result in such decimation of the membership of these unions, both local and national, as to cause reduction in income greatly in excess of $3000, jeopardizing the ability of the unions to function. Supporting affidavits were filed by a union official showing that appellant unions have about 500 contracts with Florida employers containing closed-shop agreements and affecting about 100,000 employees; and averring that if those contracts are nullified the loss in dues will greatly exceed $3000, with resulting injury to the unions far in excess of that amount. The answer of one of the appellees, the sheriff of Hillsborough County, admitted that the matter in controversy exceeded $3000. But, as we have said, the motion to dismiss filed by appellee Watson challenged the showing of the necessary jurisdictional amount. No counter affidavits, however, were filed. The District Court held it had juris-

[5] The case has not been argued on the merits here, as we limited the argument, when we noted probable jurisdiction, to jurisdictional questions.

diction under § 24(1) of the Judicial Code. None of the parties challenges that finding here. The District Court also held that it had jurisdiction under § 24(14) of the Judicial Code, 28 U. S. C. § 41(14). That provision[6] gives the district courts of the United States jurisdiction over suits brought under the Civil Rights Act[7] without allegation of any jurisdictional amount. See *Hague* v. *C. I. O.*, 307 U. S. 496; *Douglas* v. *Jeannette*, *supra*, pp. 161-162. We do not pass on the question whether the District Court had jurisdiction under § 24(1) or § 24(14) of the Judicial Code. For it is the view of a majority of the Court that jurisdiction is found in § 24(8) of the Judicial Code, 28 U. S. C. § 41(8), which grants the federal district courts jurisdiction of all "suits and proceedings arising under any law regulating commerce." As we have said, the bill alleges a conflict between the Florida law and the National Labor Relations Act. The theory of the bill is that labor unions, certified as collective bargaining representatives of employees under that Act, are granted as a matter of federal law the right to use the closed shop agreement[8] or, alternatively, that the right of collective bargaining granted by that Act includes the right to bargain collectively for a closed shop. Whether that claim is correct is a question which goes to the merits. It is, however, a substantial one. And since the right asserted is derived from or recognized by a federal law regulating commerce, a majority of the Court conclude that a suit to protect it against impairment by state action is a suit "arising under" a federal

[6] It provides that the district courts shall have original jurisdiction "Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

[7] Sec. 1 of the Civil Rights Act of April 20, 1871, 17 Stat. 13, has been continued without substantial change as R. S. § 1979, 8 U. S. C. § 43, which reads as follows: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

[8] Sec. 8(3) of that Act provides that "nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made."

law "regulating commerce." Cf. *Mulford* v. *Smith*, 307 U. S. 38, 46; *Peyton* v. *Railway Express Agency*, 316 U. S. 350; *Parker* v. *Brown*, 317 U. S. 341, 349; *Tunstall* v. *Brotherhood*, 323 U. S. 210, 213.

Another preliminary question is whether this is a proper case for a three-judge court. The statute provides that only a three-judge court may issue an interlocutory injunction suspending or restraining "the enforcement, operation or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute." § 266 of the Judicial Code, 28 U. S. C. § 380. The question is whether within the meaning of that section "statute" is restricted to legislative enactments or includes provisions of state constitutions as well. It is sometimes used to embrace all enactments, however adopted, to which a State gives the force of law. See *Stevens* v. *Griffith*, 111 U. S. 48, 50. In speaking of § 266 we recently said:

> "To bring this procedural device into play—to dislocate the normal operations of the system of lower federal courts and thereafter to come directly to this Court—requires a suit which seeks to interpose the Constitution against the enforcement of a state policy, whether such policy is declared in a state constitution or in an ordinary statute or through the delegated legislation of an 'administrative board or commission.' The crux of the business is procedural protection against an improvident state-wide doom by a federal court of a state's legislative policy. This was the aim of Congress and this is the reconciling principle of the cases."

Phillips v. *United States*, 312 U. S. 246, 251. And see *Sterling* v. *Constantin*, 287 U. S. 378, 393. It would, as the court below stated, be somewhat incongruous to hold that a single judge, while prohibited from enjoining action under an act of the state legislature, would be free to act if the state constitution alone were involved. The policy underlying § 266 admits no distinction between state action to enforce a constitutional provision and state action to enforce an act of the legislature. There is no suggestion in the history of § 266 that Congress was willing to give the federal courts a freer hand when state constitutional provisions were involved. In our view the word "statute" in § 266 is a compendious summary of various enactments, by whatever method they may be adopted, to which a State gives her sanction and is at least sufficiently inclusive to embrace constitutional provisions

But even though a district court has authority to hear and decide the case on the merits, it should not invoke its powers unless those who seek its aid have a cause of action in equity. *Douglas* v. *Jeannette*, *supra*, pp. 162-163. The power of a court of equity to act is a discretionary one. *Pennsylvania* v. *Williams*, 294 U. S. 176, 185. Where a federal court of equity is asked to interfere with the enforcement of state laws, it should do so only "to prevent irreparable injury which is clear and imminent." *Douglas* v. *Jeannette*, *supra*, p. 163; *Spielman Motor Co.* v. *Dodge*, 295 U. S. 89; *Di Giovanni* v. *Camden Fire Ins. Assn.*, 296 U. S. 64; *Watson* v. *Buck*, 313 U. S. 387.

That is a strict test. But we think appellants satisfy it. We reach that conclusion on the basis of the allegations concerning the disruption of the collective bargaining processes and the injury to the unions and to the employers alike, if the closed-shop agreement is outlawed. As we have said, it is averred that there are about 500 contracts with Florida employers containing closed-shop agreements and affecting about 100,000 employees. Each contract is affected if the closed-shop agreement is held unlawful. Some of those contracts have expired and it is desired to renew them. Others are sought to be negotiated. Thus, in case of plaintiff, J. R. Gould, it is alleged that although he is anxious and willing to enter into such a contract, he is prevented from doing so by the threats of appellees. As a result, it is alleged, he is and has been unable to secure sufficient skilled labor to conduct his business. It is alleged that there are numerous other situations of the same character. And it is shown that one employer, against whom *quo warranto* proceedings have been instituted, already has given notice of the suspension of the closed-shop agreement which it had with one of the appellant unions. Allegations are made that outlawry of closed-shop agreements will cause a disruption in production and the decimation of union membership. It is fair to say on a reading of the bill that from the viewpoint both of the appellant unions and the appellant employers the disruption in collective bargaining which would be occasioned by holding closed-shop agreements illegal would be so serious as to make it futile to attempt to measure the loss in money damages. The allegations certainly state a cause of action in equity no less clear than that sustained in *Utah Fuel Co.* v. *National Bituminous Coal Commission*, 306 U. S. 56. The loss in

bargaining position by the unions, the disruption of harmonious relationships between the union and the employers, the almost certain decrease in union membership—these are matters involving intangible values. Sec. 267 of the Judicial Code, 28 U. S. C. § 384, forbids the maintenance of suits in equity in the courts of the United States "in any case where a plain, adequate and complete remedy may be had at law." But in view of the character of the intangible interests at stake, we cannot see how any remedy at law in the federal courts[9] would be adequate. A legal cause of action in the federal courts, which involves the point, may be slow in developing. Meanwhile, collective bargaining of the kind alleged to be permitted or secured by the National Labor Relations Act may be disastrously affected. We, of course, do not intimate an opinion on the question whether the alleged conflict exists. Whether the bill makes out a case to determine the issue is the only question now before us.

Moreover, the threat to enforce the Florida law is real and imminent. *Quo warranto* proceedings have been instituted against several of the corporations who are parties to the suit on the basis that they have closed-shop agreements with the unions. And appellee Watson has announced a policy to prosecute criminally all violators of the Florida law. The threat of multiplicity of prosecutions which is here alleged would not alone be sufficient to establish a cause of action in equity. *Matthews* v. *Rodgers*, 284 U. S. 521, 529-530; *Spielman Motor Co.* v. *Dodge*, *supra*; *Beal* v. *Missouri Pacific R. Co.*, 312 U. S. 45, 49-50; *Douglas* v. *Jeannette*, *supra*, pp. 163-165. But we mention the matter here to show that the threat of irreparable injury is real not fanciful, immediate not remote. The crux of the matter is the allegation that there is an imminent threat to an entire system of collective bargaining, a threat which, if carried through, will have such repercussions on the relationship between capital and labor as to cause irreparable damage. We conclude for that reason that the bill states a cause of action in equity.[10]

[9] The inadequacy of the relief at law is measured by the character of the relief afforded by the federal not the state courts. Di Giovanni v. Camden *Fire Ins. Assn.*, *supra*, p. 69.

[10] We do not pass on the question whether an interlocutory injunction should issue. That will be open on our remand of the cause. Sec. 266 provides in part: "if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant

As we have said, the District Court passed on the merits of the controversy. In doing so at this stage of the litigation, we think it did not follow the proper course. The merits involve substantial constitutional issues concerning the meaning of a new provision of the Florida constitution which, so far as we are advised, has never been construed by the Florida courts. Those courts have the final say as to its meaning. When authoritatively construed, it may or may not have the meaning of force which appellees now assume that it has. In absence of an authoritative interpretation, it is impossible to know with certainty what constitutional issues will finally emerge. What would now be written on the constitutional questions might therefore turn out to be an academic and needless dissertation.

There is, in the first place, some question whether this new provision of Florida's constitution is self-executing[11] or requires legislation for its enforcement.[12] The District Court itself took the view that it is not self-executing and noted that no enforcing legislation has been enacted. If, on the other hand, it be assumed, as Florida's Attorney General asserts, that this constitutional provision is self-executing, we do not know what sanctions Florida will afford for its enforcement. It provides that "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization." It is asserted that this provision outlaws the closed-shop agreement and makes those who enter into one

such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or refusing after notice and hearing, an interlocutory injunction in such case." As to the findings necessary to support such relief, see Lawrence v. St. Louis-San Francisco Ry. Co., 274 U. S. 588, 595-596; Mayo v. Lakeland Highlands Canning Co., 309 U. S. 310.

[11] City of Tampa v. Tampa Waterworks Co., 45 Fla. 600, 628-629; Coleman v. State, 118 Fla. 201; Lummus v. Miami Beach Congregational Church, 142 Fla. 657.

[12] See Porter v. First National Bank, 96 Fla. 740; State v. Alson, 120 Fla. 628; State v. Jones, 121 Fla. 216; Draughon v. Holtzman, 124 Fla. 24; State v. Emerson, 126 Fla. 576; American Bakeries Co. v. Haines City, 131 Fla. 790; City of Miami v. State, 139 Fla. 598; Bryan v. City of Miami, 139 Fla. 650.

criminally liable,[13] or, in case of corporations, subjects them to *quo warranto* proceedings.[14] So far as we know, however, it would not have that effect but do no more than give to an individual working man a cause of action in case the rights granted him are denied or abridged. Or as in the case of contracts in restraint of trade at common law, it may make closed-shop agreements not unlawful only in the sense that courts will not enforce them.[15] The proviso itself raises questions of interpretation which when authoritatively settled may put the constitutional issues now sought to be raised in quite a different light or even eliminate some of them. The proviso states that "this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer." The bill alleges that the right to bargain collectively granted by the National Labor Relations Act includes the right to a closed-shop agreement.[16] Conceivably the proviso may be construed to make this Florida law applicable only to enterprises not subject to the National Labor Relations Act. Or the right to bargain collectively, recognized by the proviso, may be construed to mean the right which is granted by the National Labor Relations Act.

We give these illustrations to indicate how uncertain it is what constitutional issues will emerge once the Florida law receives an authoritative interpretation. A decision today on the constitu-

[13] Here, too, there is doubt whether the constitutional provision is self executing. Appellee Watson apparently takes the position that those who enter into closed-shop agreements violate an old Florida statute (22 Fla. Stats. Ann. § 833.02) which provides: "If two or more persons shall agree, conspire, combine or confederate together for the purpose of preventing any person from procuring work in any firm or corporation, or to cause the discharge of any person from work in such firm or corporation; or if any person shall verbally or by written or printed communication, threaten any injury to life, property or business of any person for the purpose of procuring the discharge of any workman in any firm or corporation, or to prevent any person from procuring work in such firm or corporation, such persons so combining shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine not exceeding five hundred dollars each, or by imprisonment not exceeding one year." But in Jetton-Dickie Lumber Co. v. Mather, 53 Fla. 969, the Supreme Court of Florida said that that statute "will not be applied to the case of union laborers who strike in order to secure all labor for themselves."

[14] On *quo warranto* under Florida law see State v. Tampa Water Works Co., 57 Fla. 533; State v. Duval Co., 105 Fla. 174; State v. Prevatt, 110 Fla. 29; State v. S. H. Kress & Co., 115 Fla. 189.

[15] See Mogul Steamship Co. v. McGregor, Gow & Co. (1892), A. C. 25, 39; Attorney General v. Adelaide Steamship Co., Ltd. (1913), A. C. 781, 797.

[16] See note 8, *supra*.

tionality of this Florida law would be based on a preliminary guess concerning its meaning, not on an authoritative construction of it. We have already noted that this law may be so construed as to eliminate any conflict alleged to exist between it and the National Labor Relations Act. If so, one of the constitutional questions presented by this case would disappear. It is suggested, however, that the due process question is ripe for adjudication no matter how the Florida law is construed. But if the law does no more than to grant an individual working man a cause of action in case he is denied employment unless he joins a union, or if it goes no further than to make closed shop agreements unenforceable between the parties, no case or controversy raising the due process question would be presented for decision by the present bill. For individual working men are not here asserting rights against unions or employers. Nor does the present case involve litigation by unions to enforce closed shop agreements against employers. Furthermore, if, as the District Court thought, this Florida law is not self-executing, suits seeking to raise the due process question or any other constitutional question would be premature until Florida supplied sanctions for its enforcement. A decision today on the merits might, therefore, amount to no more than an advisory opinion. In *Railroad Commission* v. *Pullman, supra*; *Chicago* v. *Fieldcrest Dairies, supra*, and *Spector Motor Co.* v. *McLaughlin, supra*, we held that under such circumstances the proper course was for the District Court to retain the bill until a definite determination of the local law questions could be made by the state courts. The doubts concerning the meaning of the Florida law indicate that such a procedure is peculiarly appropriate here. *Quo warranto* proceedings presently pending in the Florida courts may resolve the doubts. And other actions, such as suits for a declaratory judgment,[17] would seem to be available in the state courts.

It is said that since the continuance of litigation in the state courts is the only ground asserted for equitable relief, the entire purpose of the present suit will be defeated by retaining the bill pending determination of proceedings in the state courts. But the problem is not unique. It was implicit in *Railroad Commission* v. *Pullman Co., supra*. Moreover, the case for equitable relief rests not merely on the presence of a few cases in the state

[17] See 5 Fla. Stats. Ann., § 62.09; Sheldon v. Powell, 99 Fla. 782.

courts but also on the threat of wholesale prosecutions under a state law which the chief law enforcement official of the State maintains outlaws contracts for collective bargaining which labor and management have widely made. The resources of equity are not inadequate to deal with the problem so as to avoid unnecessary friction with state policies, while selective cases go forward in the state courts for an orderly and expeditious adjudication of the state law questions.

We reverse the judgment of the District Court and remand the cause to it with directions to retain the bill pending the determination of proceedings in the state courts in conformity with this opinion.

By consent of the parties the Cigar Manufacturers Association of Tampa was dismissed as a party defendant in the District Court. Accordingly, its motion to dismiss this appeal as against it is granted.

So ordered.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

Mr. Chief Justice STONE, dissenting.

I think the suit should be dismissed for want of jurisdiction in equity.

A criminal prosecution or other litigation conducted in state courts by a state official, within the scope of his authority as such, may, it is true, cause apprehension on the part of those who are alleged to be lawbreakers. Such apprehensions and those of others may lead to changes in business practices to the injury of the alleged lawbreakers. But the conduct of such proceedings, in good faith and in conformity to law, is not actionable at law or in equity. Damage or loss to one's business or pocketbook, resulting from such proceedings, is but an incident to the necessary performance of a public function of state government. It is *damnum absque injuria*. *Spielman Motor Co.* v. *Dodge*, 295 U. S. 89, 95 and cases cited; *Beal* v. *Missouri Pacific R. Co.*, 312 U. S. 45, 49, 50, and cases cited. And even when the threatened injury is attributable to the state court proceeding to enforce a state statute which is asserted to be unconstitutional, it does not follow that equity will or should exercise its jurisdiction to restrain the prosecution.

Congress has adopted the policy of leaving to the courts of the states the trials for criminal violations of state law and of *quo warranto* proceedings against their own corporations. Federal courts of equity, in the exercise of their sound discretion, conform to that policy by refusing to interfere with proceedings in the state courts except where unusual circumstances clearly call for equitable relief. Hence it is well recognized that measures taken by state officials to enforce state laws said to be unconstitutional may be enjoined by federal courts only to prevent "irreparable injury," and not merely to avoid that harm which is inseparable from the litigation of the mooted issues whether in a state or a federal court. *Ex parte Young*, 209 U. S. 123, 155, 156, 166; *Cavanaugh* v. *Looney*, 248 U. S. 453, 456; *Hygrade Provision Co.* v. *Sherman*, 266 U. S. 497, 500; *Fenner* v. *Boykin*, 271 U. S. 240, 243; *Mass. State Grange* v. *Benton*, 272 U. S. 525, 527; *Spielman Motor Co.* v. *Dodge*, *supra*; *DiGiovanni* v. *Camden Fire Ins. Ass'n*, 296 U. S. 64; *Douglas* v. *Jeannette*, 319 U. S. 157, and cases cited. It is not enough to show that the injury to appellants is only that which is a normal incident of the state's assertion of its authority to enforce its laws. No person is immune from any good faith prosecution by the state for his unlawful acts. Neither the imminence of the prosecution nor the incidental injury which may flow from it is a ground for equity relief, since the constitutionality of the statute may be ascertained by the proceeding in the state courts with appellate review by this Court, as readily as by a suit in the federal courts. *Spielman Motor Co.* v. *Dodge*, *supra*, 95, and cases cited; *Beal* v. *Missouri Pacific R. Corp.*, *supra*, 49, and cases cited; *Watson* v. *Buck*, 313 U. S. 387; *Williams* v. *Miller*, 317 U. S. 599; *Douglas* v. *Jeannette*, *supra*.

Until the state questions here mooted are authoritatively settled by the state courts, and the constitutional questions which it is asserted they raise are settled by this Court, the threat to the closed shop will continue to embarrass labor unions and employers who have or seek to have closed shop contracts. That embarrassment can be removed only by the process of adjudication which the state is constitutionally entitled to pursue, so long as the state and its officials proceed according to law. *Davis & Farnum Mfg. Co.* v. *Los Angeles*, 189 U. S. 207; *Fenner* v. *Boykin*, *supra*; *Spielman Motor Co.* v. *Dodge*, *supra*, 95. Hence the arrest by federal courts of the processes of the civil or criminal law of the state,

and the determination of questions of civil or criminal liability under state law, must be predicated not only upon a showing of unlawful or unconstitutional action on the part of the state, but upon some showing of a resulting immediate and irreparable injury which can be avoided or prevented only by the federal court's transferring the trial of the state questions from the state courts to itself. *Douglas* v. *Jeannette*, *supra*, 164.

There is no contention here that the state officials are acting outside their authority as such, that they are not acting in good faith, *Beal* v. *Missouri Pacific R. Co.*, *supra*, 49; *Douglas* v. *Jeannette*, *supra*, 164, or that they threaten to make oppressive or malicious use of the legal processes of the state. Cf. *Gumbel* v. *Pitkin*, 124 U. S. 131. Nor is there any showing that the litigation of pending questions in the federal courts will be any less embarrassing or injurious to appellants than the litigation of suits already pending in the state courts with review by this Court. *Douglas* v. *Jeannette*, *supra*, 164.

There are no allegations which would take this case out of the rule that in general a federal court of equity will not exercise its power to stay litigation lawfully proceeding in state courts, or at all except where it is plain that by the exercise of its jurisdiction and its decision of the issue pending in the state courts it will avoid some immediate and irreparable injury to a plaintiff. The case is to be distinguished from those sustaining federal equity jurisdiction where the acts sought to be enjoined, which are asserted to be unlawful, do not involve any resort by an enforcement officer to the courts, where their lawfulness would, as here, be determined. *Utah Fuel Co.* v. *Coal Comm'n*, 306 U. S. 56; *Hague* v. *C. I. O.*, 307 U. S. 496.

It is not suggested that appellants will be forced to comply with the Act because the penalties attending its violation are cumulative or so great that appellants may not, without risk of irreparable loss, continue their closed shop contracts in order to test the constitutionality of the Act. Cf. *Ex parte Young*, *supra*, 144, *Missouri Pacific Ry. Co.* v. *Tucker*, 230 U. S. 340, 349; *Terrace* v. *Thompson*, 263 U. S. 197, 212, 214-216; *Beal* v. *Missouri Pacific R. Co.*, *supra*, 51. Nor does the complaint allege that any of the persons, other than appellants, with whom appellants deal, employers or employees, have, because of the threats of appellees, broken or threatened to break their existing closed-shop agree-

ments or have refused to enter into such agreements.* Cf. *Kessler v. Eldred*, 206 U. S. 285. So far as the complaint shows such persons have refused to recognize the applicability or validity of the Florida amendment and are prepared to contest it. Thus there is no showing of threatened injury to applicants which would afford any basis for an injunction. True, it is alleged that appellant Gould, an employer, to his irreparable damage, has not been able to enter into closed shop agreements although anxious to do so. But it is not said that any of the other appellants are, or have been, damaged by his failure to enter into such agreements, and Gould himself may test the law in Florida proceedings by refusing to comply with the alleged threats of appellees. It does not appear that his damage will be any different or greater if the litigation proceeds in the state instead of the federal courts, or that it is more than an unavoidable incident to litigation wherever conducted where the lawfulness of a business practice is drawn in question. There is no showing that appellants have sought or been denied the right to intervene in pending *quo warranto* proceedings, compare Florida Stats. § 63.09; *Scitaw* v. *Sher*, 136 Fla. 284; *Daugherty* v. *Latham*, 139 Fla. 477; *Riviera Club* v. *Belle Mead Develop. Corp.*, 141 Fla. 538; *Carr* v. *Carlisle*, 146 Fla. 201; *Tallentire* v. *Burkhart*, 150 Fla. 137, although the Attorney General of the state has taken the position in the pending proceedings, as he does here, that he does not oppose the granting of applications for intervention by the appellant labor unions.

We cannot assume that the pending suits in *quo warranto*, with review by this court of the federal questions involved, will not

*It is stated in the papers on appellants' motion in the district court for a restraining order, which now stands denied, that one employer, against whom *quo warranto* proceedings have been brought, has suspended the closed shop agreement which it had with one of appellants' unions, and further that appellees have filed *quo warranto* proceedings against several corporations having closed shop agreements with appellants, that "there will not be any bona fide defense made in said suits or most of them", and that the "prayers contained in the petitions" filed by appellees for a declaration "to the effect that the constitutional amendment here under attack is legal and valid and the closed shop provisions of the contract invalidated" will be granted. No such averments appear in the complaint, the allegations of which alone supply the test of the equity jurisdiction. Mass. State Grange v. Benton, 272 U. S. 525, 528; Williams v. Miller, 317 U. S. 599. Further, assuming that statements in the motion papers may supply essential allegations lacking in the complaint, no reason appears why the employer appellants cannot test the validity of the Florida laws and constitution by suits against their employers who have broken their closed shop contracts. There is no allegation in the motion that any employer has refused to enter into a closed shop contract because of the threats of appellees.

settle all pending legal questions, state and federal, as readily as a suit in the federal court, or that the parties will not abide by the result. The bill of complaint is not framed on the theory of a bill of peace. Cf. *Cleveland* v. *Cleveland City R. Co.*, 194 U. S. 517; *Boise Artesian Water Co.* v. *Boise City*, 213 U. S. 276; *Beal* v. *Missouri Pacific R. Co.*, *supra*, 50. It does not allege that repeated, groundless or otherwise vexatious suits will be brought. *McDaniel* v. *Traylor*, 212 U. S. 428; *DiGiovanni* v. *Camden Fire Ins. Ass'n*, *supra*, 68. It does not seek to join all parties threatened by the prosecution of suits or show such singleness of issue of decisive questions as will permit the adjudication of all in a single suit. *Francis* v. *Flinn*, 118 U. S. 385; *Scott* v. *Donald*, 165 U. S. 107, 115; *Hale* v. *Allison*, 188 U. S. 56, 77 *et seq.*; *St. Louis, Iron Mountain & Southern Ry. Co.* v. *McKnight*, 244 U. S. 368, 375; *Kelley* v. *Gill*, 245 U. S. 116, 120; *Matthews* v. *Rodgers*, 284 U. S. 521, 530.

And, finally, the determination of the constitutional questions, which is the only purpose of the suit, must turn on the authoritative decision of the numerous and novel state questions presented. Cf. *Hygrade Provision Co.* v. *Sherman*, *supra*; *Cline* v. *Frink Dairy Co.*, 274 U. S. 445; *Spielman Motor Co.* v. *Dodge*, *supra*; *Beal* v. *Missouri Pacific R. Co.*, *supra*, 50. The presence of such state questions in the suit is itself a sufficient ground for our declining to decide the constitutional questions in advance of authoritative determination of the state questions by the state courts. Cf. *Alabama State Federation* v. *McAdory*, 325 U. S. 450; *C. I. O.* v. *McAdory*, 325 U. S. 472; see *Spector Motor Co.* v. *McLaughlin*, 323 U. S. 101.

Further, since the whole aim of appellants' suit is to enjoin the appellees from proceeding in the state courts, this Court's direction to the district court to retain the bill pending the determination of proceedings in the state courts defeats the entire purpose of the present suit and permits the continuance of state litigation which is the only ground asserted for equitable relief. If appellees should at any time make oppressive use of legal process of the state, bring repeated, groundless suits, or otherwise threaten irreparable damage to appellants, the federal courts are open to them upon their making allegations sufficient to justify intervention by equity. But the mere chance that such irreparable damage may be threatened at some indefinite time in the future

although it is not now, is no reason for the district court to retain the bill which wholly fails to show any ground for equitable relief. There being no showing of damage to the appellants, actual or potential, save that which is a necessary incident to the state's exercise of its constitutional power to enforce its constitution and laws, which this Court now permits, it is our plain duty to dismiss the suit.

Mr. Justice MURPHY, dissenting in part.

I dissent from that part of the Court's opinion that holds that the District Court erred in passing upon the merits of the controversy presented by this case.

It may well be that there are serious questions as to how and against whom Florida's new constitutional provision will be enforced. And the provision may be construed so as not to conflict with the National Labor Relations Act. Such matters must wait for authoritative action by the Florida courts. But there are federal constitutional issues inherent on the face of this provision that do not depend upon any interpretation or application made by Florida courts. Those issues were raised and decided in the court below. And they should be given appropriate attention by this Court.

The Court today holds that there is a very real and imminent threat to the entire system of collective bargaining in Florida growing out of the current attempts to enforce the Florida law. It should not be and is not difficult to discover the federal constitutional issues that are involved in that threat. True, we cannot say what constitutional issues may arise out of the law as subsequently interpreted and applied by the Florida courts. But we can say what issues are apparent on the face of the law itself, the law that has given rise to the grave threat to collective bargaining in Florida. Either the provision does or does not violate due process as guaranteed in the Fourteenth Amendment; either it falls outside or inside the permissible scope of the police power of the state; either it is in accord or in conflict on its face with the National Labor Relations Act. Those are the issues the parties have raised and the court below has decided. Those are the issues that are obviously involved in relation to the Florida law. I do not believe that a federal court is incapable of recognizing or de-

ciding those issues. Nor do I believe that it should close its eyes to those issues merely because they are difficult or highly controversial. In short, appellants' claims are ripe for adjudication.

Moreover, the Court remands the case to the District Court with directions to retain the case until the Florida courts interpret the provision in the Florida constitution. The efficacy of this disposition of the case is less real than apparent. It affords little if any protection to the appellants so far as the issues now in dispute are concerned. They are left unprotected against the very threat which this Court states is real and imminent. And should the Florida courts ultimately decide these issues adversely to appellants' contentions they will have no effective recourse in the District Court, which already has expressed itself fully and adversely relative to those contentions.

I dissent, therefore, from a procedure depriving appellants of a full hearing and a determination of the issues they have properly raised in the District Court and denying them the right to secure the protection the federal equitable power might give them.